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ABSTRACT

The field of labor relations in colleges and universities is developing quite rapidly in the U.S. In the public sector, a variety of new labor relations laws are being adopted at the state level. Pending the possible adoption of federal legislation governing labor relations in public institutions, personnel officers who are without a state law governing labor relations activities may have to custom-tailor institutional policies, the design of which may be influenced by any number of groups of persons from administrative officials to students. In the legislative field the personnel officer needs to keep informed of the: (1) state or federal laws and the administrative and court decisions that apply to his institution; and (2) procedural regulations that have been adopted by the administrative agency charged with interpreting, implementing, and enforcing the applicable legislation. In the field of union-management relations, the personnel officer or employee relations director also will need to keep current regarding: (1) faulty personnel policies and supervisory practices that may contribute to employee discontent and unionization; (2) successful tactics; communications, and merchandising methods used by unions during organizing drives; and (3) critical issues in recent negotiations in both the public and private sectors in the area. [This document is available in microfiche only.] (Author/HS)

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LABOR RELATIONS IN HIGHER EDUCATION

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LABOR RELATIONS IN HIGHER EDUCATION

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LABOR RELATIONS IN HIGHER EDUCATION

by
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College and University Personnel Association
1971

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PREFACE

After the Board of Directors of the National Association of College and University Business Officers expressed a need to the College and University Personnel Association (CUPA) for "some down-to-earth suggestions and guidelines" on the general subject of labor unions in higher education, CUPA undertook the assignment, including necessary financial support, now culminated in this publication. In view of rapidly changing developments in labor relations in higher education, the project is indeed timely.

The authors have found the assignment challenging and interesting and hope that members of the two Associations, and other readers, find that this book realizes the primary objectives as fully as is practical. Obviously, each aspect of the subject could have been discussed in greater depth; but, as with other publications, some restraints had to be applied. Accordingly, this book should be considered as a first, but not the last, word in a sophisticated understanding of the technical, strategic, tactical, and legal approaches to labor relations in higher education.

The words, "university," "college," and "institution," have been used interchangeably, as is true of the titles, "president," "chancellor," and "administrator," and the terms, "personnel" and "employee relations."

Many ideas have been borrowed from past and present associates and from the varied individual experiences of the authors. Of course, it would be impossible to identify and individually thank everyone who has contributed, directly or indirectly, to the present state of our thinking, but we do appreciate their assistance. A very special thanks and a word of recognition must be given, however, to those staff members who have spent so many hours working on the drafting and rewriting of the various chapters: Carol Baker, University of Missouri at Columbia; Mary Virginia Heath, Martha Burgess, and Jean Somers, University of Illinois at Urbana-Champaign; and Patricia Curran, Stevens Institute of Technology, Hoboken, New Jersey. They gave

generously of their time and energy, and their interest and enthusiasm encouraged our continuing efforts toward completion. Our thanks is also extended to Kathryn G. Hansen, Editor for the College and University Personnel Association, who performed the final editing and publishing details.

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August, 1971

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CHAPTER I

INTRODUCTION

A. Lee Belcher

The field of labor relations in colleges and universities in the United States is developing so rapidly that one hesitates to send to the printer a "final" draft on the subject. It is nearly a certainty that one or more sections will be somewhat out of date, and conceivably harmfully misleading to the reader, before the galley proofs have been approved. Similar periods of significant changes in labor relations were experienced in industry during critical periods since 1935, when the Wagner Act, forerunner to the present Labor-Management Relations (Taft-Hartley) Act,[1] was passed by Congress. However, with more than thirty-five years of experience under various federal and state labor laws available for study, those in colleges and universities should profit from the past mistakes and successes in private industry and hopefully not repeat the errors.

Personnel Officers will have to work hard to keep abreast of these changing developments. For example, the private institutions were given a completely new set of game rules on June 12, 1970, when the National Labor Relations Board (NLRB) reversed its 19-year-old policy, established in the Columbia University case in 1951, and asserted jurisdiction over the major private colleges and universities. These private institutions (except the smaller ones having less than $1,000,000 in gross annual revenue,[2] which are exempt from coverage because their operations do not significantly affect interstate commerce) are now subject to the provisions of the National Labor Relations Act, together with the regulations and decisions of the NLRB. Unions rep-

[1]To be referred to as the National Labor Relations Act.

[2]This figure "includes revenues from all sources, excepting only contributions which, because of limitations placed thereon by the grantor, are not available for operating expenses."

resenting, or seeking to organize, the employees of these private colleges and universities are also governed by the same legal requirements of the Act.

In the public sector, a variety of new labor relations laws are being adopted at the state level. No two of these laws are the same, although many are largely patterned after the National Labor Relations Act. As this is being written, there is growing support for passage of a new federal law by Congress which would apply to all state, county, and municipal employers and employees, including public colleges and universities. Pending the possible adoption of federal legislation governing labor relations in public institutions, Personnel Officers who are without a state law governing labor relations activities may have to custom-tailor institutional policies, the design of which may be influenced by members of governing boards (for example, Board of Regents), the top administrative officers, legal opinions, the goals and strengths of the unions involved, plus—and a rather big plus it may be—the ideas of fairness and justice as seen by various student groups and/or faculty members. Because of the hodgepodge of uncertain legislative guidelines, it is extremely difficult today to address ourselves in the precise manner which would be desirable to specific institutional needs.

As with the colors of the spectrum which an artist must learn to use, there are several broad areas of labor relations which require continuous attention if the Personnel Officer is to be competent to carry out his new and expanding responsibilities. In the legislative field, he needs to keep informed on the:

1. State or federal laws and the administrative and court decisions which apply to his institution; and
2. Procedural regulations which have been adopted by the administrative agency charged with interpreting, implementing, and enforcing the applicable legislation.

A few of the most important areas of concern would include:

1. Representation election procedures, including challenge or appeal rights;
2. Criteria for determining appropriate bargaining units;
3. Unfair labor practices—by employers and by unions;
4. Mandatory, permissive, and prohibited issues for collective bargaining;
5. Rights of individual employees; and

6. Strikes and alternative impasse procedures—mediation, fact-finding, and advisory arbitration.

In the field of union-management relations, the Personnel Officer or Employee Relations Director also will need to keep current regarding:

1. Faulty personnel policies and supervisory practices which may contribute to employee discontent and unionization;
2. Successful tactics, communications, and "merchandising" methods used by unions during organizing drives. These methods will vary by unions and individual union leaders, by the occupational nature of the employee groups involved (for example, service and maintenance, clerical, technical, and professional staffs), by the applicable laws, if any, and by the extent to which other groups on campus are organized; and
3. Critical issues in recent negotiations in both the public and private sectors in the area.

CHAPTER 2

BASIC CONCEPTS AND OVERVIEW

A. Lee Belcher

Extent of Unionization

Although collective bargaining in higher education is thought of as a fairly recent development, this is not entirely correct. Some of the colleges and universities first entered into collective bargaining with unions representing their employees in the 1940's. However, the rapid developments during the past few years and the expansion of successful union organizing efforts have been dramatic and significant. The major growth of union membership has been among the service and maintenance employees, but it has not been limited to these groups. Unionization has occurred among other employee groups, such as the following:

Office and clerical personnel
Security forces
Supervisors
Accountants, Computer Programmers, Systems Analysts
Student employees
Faculties
Teaching Assistants and Research Assistants
Nurses and Pharmacists in medical schools
Interns and Residents in university hospitals

Active Unions

Many different unions have been recruiting in colleges and universities. The following is only a partial list.

American Federation of State, County, and Municipal Employees
Service Employees' International Union

Laborers' International Union
Teamsters Union
International Union of Operating Engineers
The several craft unions in the building trades
American Federation of Teachers
National Society of Professors
National Faculty Association
American Association of University Professors
State Civil Service Employees' Associations
American Nurses Association
Fraternal Order of Police
International Union of Office and Professional Employees
Various local independent groups

Issues in Negotiations

As in industrial collective bargaining, the issues which have become part of the negotiations in higher education have been growing rapidly. In addition to the "bread and butter" issues, such as wages and fringe benefits, many other subjects related to working conditions have been subject to collective bargaining. It would be impractical to prepare an all-inclusive list, but to fully appreciate the broad scope of union-management collective bargaining and its impact on universities, a representative list of subjects which have been included in signed contracts follows.

Recognition and bargaining unit
Management's rights
No strike and no lockout
No discrimination
Probationary, part-time and temporary employees
Wage rates
Hours of work and shifts
Seniority
Promotion and transfer
Layoff and recall
Overtime
Vacations
Sick leave
Funeral leave
Maternity leave of absence
Jury pay
Military leave
Holidays
Pay checks and pay day
Uniforms, clothing, etc.
Checkoff of union dues
Shift differentials
Training and education programs
Call-in and call-back

Safety
Bulletin boards
Grievance procedure and arbitration
Stewards and union officers
Use of facilities
Personnel records
Medical examinations
Union leave
Rest periods
Retirement plan
Health benefit plan
Life insurance
Disciplinary actions
Meal period
Separability
Term of agreement

Responsibilities of Administration

Top administrative officers of colleges and universities should recognize their responsibilities for the overall union-management relationship. Many decisions made by a governing board and by top administration will have an employee relations impact. Accordingly, serious consideration of the employee relations implications should be given during the discussions leading to these decisions in order to minimize the potential problems and to maximize the opportunities for stable union-management relations. Furthermore, attention often needs to be given to communicating these actions to first-line and middle management, to employees, and, perhaps, to union leaders.

"Instant Age"

It is important to be consciously aware that we are in an era when employees expect prompt and decisive answers to questions and requests. This has been described as the "Instant Age," illustrated by instant news coverage by radio and television, instant coffee, instant TV dinners, and "instant" transportation, etc. Employees often become frustrated and irritated by seemingly unnecessary delays, or by the all-too-frequent explanations, such as, "We will give this matter some thought"; "We are looking into the matter"; and similar replies. One cannot always respond with an immediate "yes" or "no" to every request, but it is necessary to give an answer as promptly as possible, as well as one with a logical, supportive explanation.

Resources

Problems of labor-management relations are becoming more difficult to resolve for public institutions because of the taxpayer "revolt" against ever-increasing taxes. Employees and union leaders expect to receive increases in wages and fringe benefits comparable to those being paid employees in industry. This is not always possible. Negotiated increases in industry have been unusually large during the last few years, while in many states the appropriations, or other sources of funds for colleges and universities, have not kept abreast of needs.

Private institutions also are caught in the squeeze between inflation and a limited increase in income. This often has made it difficult to reach a negotiated agreement on a basis which has been entirely reasonable and acceptable to all concerned.

Strikes

There are no legal restrictions on strikes at private colleges and universities, except those strikes which may be in violation of the terms of the contract or strikes which may be for the purpose of forcing the employer to commit an unfair labor practice under the National Labor Relations Act.

At public institutions, most strikes have been considered illegal. However, recently adopted laws in Pennsylvania and Hawaii permit strikes by public employees under certain conditions. These innovations in state legislation may well be an indication of what to expect in other states, or by action of Congress. While not predicting that other states will adopt such strike-permissive legislation, the trend does bear watching.

With or without permissive legislation, the tendency of public employees to strike,[1] even though it is illegal, has influenced collective bargaining in public institutions, and will, no doubt, continue to do so.

Personnel Function

Because of the advent of unionization on campuses, the duties and responsibilities of the personnel function are rapidly changing. Many of the personnel staff will find labor relations an exciting new challenge and will prepare to assume these new responsibilities. It can be ex-

[1]For further discussion of strikes, see Chapter 11.

pected that others will not have the emotional constitution essential to finding satisfaction from the confrontations and conflict, which, at times, are characteristic of union-management relations. In any event, thought should be given to the experience and qualifications required for assuming these added responsibilities, and steps should be taken to achieve the needed organizational strength well in advance of a crisis.

Faculty Bargaining

Although this discussion is primarily directed to collective bargaining with nonacademic staff, the recent experiences in collective bargaining by some college faculties should be noted. At this time, most of the formal negotiations with organizations representing faculties of four-year institutions of higher education have occurred in New York, New Jersey, Massachusetts, Michigan, and in a few other states.

Faculty bargaining in the Junior or Community Colleges seems to be more widespread and to be growing at a more rapid rate than in the four-year institutions.

The Teaching Assistants, Graduate Assistants, and Research Assistants on a few campuses have become organized and have negotiated signed agreements with their universities—sometimes after extended strikes. In some instances, the Teaching Assistants have chosen to bargain through their own independent organizations. On other campuses, they have organized local unions affiliated with the American Federation of Teachers (AFL-CIO).

The problems inherent in collective bargaining with faculty organizations are quite different from those encountered in bargaining with the service and maintenance employees. These differences run the gamut from defining the appropriate bargaining unit (for example, Who is management?), to bargainable issues (for example, What are management's rights?), to the implementation of the agreement (for example, Which committee hears "grievances" alleging violation of academic freedom? and How is academic freedom defined for collective bargaining purposes?).

The many unique facets of faculty collective bargaining do not lend themselves to a brief or simple discussion. They are not of a similar nature to the problems of nonacademic personnel so as to be easily blended with the points covered herein. For these reasons, no attempt will be made to discuss in detail the bargaining relationship with unions representing faculty members.

CHAPTER 3

OBJECTIVES

A. Lee Belcher

Goals

In considering labor-management relations in universities, it is important to recognize that every major policy decision should be reached with some purpose, or objective, in mind. These goals will not always be achieved, but without a sense of direction and objectives, one is sailing in the fog of uncertainty without modern navigation equipment.

Phases

There are five principle developmental phases in labor relations, each with several options. Decisions must be made as to one's objectives in each phase. These phases may be delineated as (1) before any organizational interest has begun to develop; (2) when employees are being solicited for union membership; (3) when the union is requesting recognition as the bargaining agent; (4) the negotiations leading to the first signed agreement between the union and the university; and (5) the ongoing period when all parties are living under the terms of the agreement, processing grievances alleging violations, and the subsequent negotiations of new agreements.

1. Before Unionization

In the first phase there is no union activity on campus and no rumors of employee interest in unionism. What should be the objectives[1] of the administration, and especially of the personnel function, at this stage? It would seem that the following are the important goals:

[1]For a discussion of the reasons employees join unions, see Chapter 5.

1. An efficient and productive work force;
2. Stability of the work force with an optimum level of turnover;
3. A fair sharing of the available resources among all of the various groups of employees—academic, professional, administrative, and service and support staffs;
4. Adequate means of resolving grievances and misunderstandings in order to reduce the causes of discontent among the staff;
5. A sincere belief by the employees that their supervisors have a personal interest in their economic well-being, their future, their promotional opportunities, and their job security; and
6. Consistent and uniform interpretation and application of personnel policies, with a minimum of favoritism.

All of these objectives are related to maintaining a favorable employee attitude toward the college.

2. Union Rumors

The second phase occurs when there are rumors circulating on campus concerning union organizers contacting employees and inviting them to a meeting "to learn more about the union's programs," or when handbills are being distributed in the parking lots, etc. At this point, union organizing is taking place, but it is before a formal request has been made to the university for union recognition.

What should be the objectives[2] of the administration and the personnel function at this time? There are several options. If the objective is one of complete neutrality, one's actions will be quite different than if the objective is to thwart the union's organizing drive.

In either event, it is essential that all levels of supervision know the university's position and that they be given early guidance as to how to respond to employees' questions and the union's organizing efforts. Even if the administration has chosen to be neutral, some supervisors will personally disagree with the decision and often will reveal their opposition to unions. Accordingly, it is important that they be given clear-cut instructions to follow. But whatever position is taken by the administration, this is a critical period. Often the first-line supervisors are the *key* to the success or failure of the university's efforts, and they are entitled to sound coaching on what they can, and should, say and do.

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[2]For a discussion of union organizing drives and management's responses, see Chapters 6 and 7.

3. Representation Election

In the third phase, the union will have recruited a substantial percentage of the employees and will have formally requested that the administration recognize it as the bargaining agent. When there is an applicable state law, the public university and the union will be governed by its provisions for determining the wishes of the employees regarding union representation. Usually, this is by a secret ballot election. For private colleges, the procedures for making this determination of employee interest in unionization are administered by the National Labor Relations Board (NLRB).

Again, it is essential at this phase that the administration decide, hopefully well in advance, what its objectives[3] are. For example, is the university willing to accept signed membership cards as conclusive evidence of a majority employee interest in collective bargaining? While some colleges have done so, many employers have found this may not be a reliable method for determining the current wishes of the employees, and they will insist on having a secret election.

Another important decision concerns the question as to what group constitutes the appropriate bargaining unit. If the objective is to have as few bargaining units as possible, consistent with the governing statutes, the actions taken will be different than if there is little concern about the number of groups with whom the university will negotiate agreements. It is conceivable that a major university could have as many as fifteen or more bargaining units on its campus; for example, the many crafts and trades employed, the various service groups, the professional and technical staffs, and the office personnel. In some states, even the supervisors may legally organize for the purpose of collective bargaining.

4. First Negotiations

The fourth phase begins when the university is negotiating the first contract with the union. This is a critical period because of the long-time impact of the agreements reached.

Most provisions of a union agreement place some restrictions on the employer and limit to some degree his flexibility to manage. Recognition of this will serve as an important guide in determining the position to be taken at the bargaining table and in drafting contract language.

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[3]For a discussion of appropriate bargaining units and election procedures, see Chapters 8 and 9.

In addition to the economic demands, there are the following three fundamental issues (plus many other demands covering a wide range of subjects) on which management can expect the union to seek an agreement.

Union security and checkoff
Grievance and arbitration procedures
Seniority

One needs to weigh carefully the pros and cons and decide what the university's position will be on each of these matters. In doing so, it is also well to determine if there are any state laws which are controlling, as well as to determine if there is a possible conflict with the state finance or civil service policies.

For the administration, one of the more critical areas of concern will be in maintaining management's prerogatives or management's rights. In this connection, it will be important that a determination of the university's objectives be carefully thought out early in the collective bargaining.

The natural tendency is to think of negotiations in connection with only the service or maintenance personnel. With the trends of the last few years pointing toward other groups becoming interested in unionism, these various questions should be raised as they may apply to the professional, technical, and supervisory staffs. Each of the different professions may necessitate different decisions by the administration. Certain objectives which might be well thought out for negotiations with the nurses in the medical center may not be appropriate for negotiations with the library staff.

Assuming that there will still be some unresolved issues after extensive negotiations, the university may be faced with decisions as to the utilization of mediation, fact-finding, or advisory arbitration to reach an agreement. And there may be need for decisions with regard to strikes, the use of injuctions, and whether to continue classes, even though a substantial number of employees are on strike.

Defining one's objectives,[4] recognizing the available options, and making appropriate plans in advance will enhance the quality and soundness of these important decisions.

5. Living with Agreement

The fifth, and ongoing phase, is that period when the parties are living with the terms of the agreement, processing grievances, and

[4]For a more detailed discussion of negotiations, see Chapter 10.

ultimately negotiating changes in the contract. Decisions will be needed as to the objectives of the university in such areas as supervisory training, working with shop stewards in handling grievances, and higher management's role in review of grievances on appeal.

It has not been the intention of the author to suggest pat answers to the many questions raised. Few readers would accept such easy answers as universally appropriate. It is hoped, however, that it has been helpful to have a frame of reference so that the decisions reached will be sound and practical for a particular situation. The following Chapters will have substantially more meaning, if serious consideration has first been given to the many options in each of the phases of collective bargaining.

CHAPTER 4

POLICY QUESTIONS FOR EARLY DETERMINATION

Oscar S. Smith

Rules of the Road

The established American system of collective bargaining contemplates a mutual obligation of employer and employee representatives to meet at reasonable times, to confer in good faith, and, when agreement has been reached, to execute a written document defining the wages and working conditions which are to prevail for covered employees for a given period of time.[1] To be workable, this document must include a delineation of the basic relationship of each party to the other under the agreement. Preceding the establishment of any collective bargaining relationship is the determination of the rules and procedures which govern the establishment of the relationship and any organizational activity which accompanies it.

Private Institutions—Source of Rules

For most private institutions of higher learning, the rules of the road are found in the National Labor Relations Act (NLRA) and in its administration by the National Labor Relations Board (NLRB). This Act establishes the procedures to be followed in defining bargaining units and in determining whether, and which, representatives have been selected by employees and hence amounts to a prerecognition code of conduct for both parties. The National Labor Relations Board is empowered (1) to decide unit and representation disputes; and (2) to administer the conduct guidelines.

[1]Section 8(C), National Labor Relations Act 49 U.S. Statutes 449, as amended.

The National Labor Relations Act, as presently interpreted and administered, does not prescribe any particular content for a labor agreement, but certain items are mandatory items to be bargained over if either party so requests, while other items are permissible matters for bargaining. Conduct prohibited by the statute and rights granted are not bargainable. These rules of the road for the private institutions, based in the NLRA, have been applied and interpreted in some 200 volumes of decisions by the National Labor Relations Board. Large numbers of these decisions have been reviewed and further interpreted by the courts. In some states, but not in others, there are state acts which provide the rules for those small private institutions over which the National Labor Relations Board has decided not to assert jurisdiction.

Public Institutions—Source of Rules

In a limited number of states, there are state counterparts to the National Labor Relations Act which provide rules of the road for the public institutions. Some of these state statutes cover local public employees, for example, high schools, but do not cover state employees, for example, state universities. But, for public institutions in other states, there are no statutorily prescribed rules of the road, and there are no labor relations acts available for use by either the institutions or by their employees.

It would be a mistake to assume that institutions which are not subject to any labor laws are completely free to do anything they want to do, either by way of encouragement or discouragement of employee organization. A right of employees, both public and private, to join unions and to select representatives had received some recognition in the courts prior to the passage of the National Labor Relations Act in 1935. Thirty-five years of vigorous administration and enforcement of that Act has been accompanied by a spin-off of the right to join a union, which is now generally recognized, irrespective of the existence of a specific law. This probably is true in respect to both public and private employees. There are a few jurisdictions which still have statutes prohibiting union organization, but it seems doubtful that they would stand if tested in present day courts.

Organization without recognition may breed ill will and controversy. Once organization has occurred, an employer may find that recognition is the feasible alternative which is available to him. Where, then, does the public employer, not covered by any state act, turn for guidance on

acceptable conduct prior to, and on procedures to be followed in, recognition? To whom does he turn as a referee to decide any dispute concerning representation?

The common interests of private and public institutions are such that few, if any, public institutions can reject employee relations practices which have been legislatively and judicially determined as sound public policy for private institutions. The wise course for an institution, not subject to a specific statute, may be to look to the National Labor Relations Act for guidelines, even though the administrative machinery of the National Labor Relations Board may not be available. Of course, the lack of such machinery may result in employee representatives trying to adopt some course of action inconsistent with the policies of the National Labor Relations Act. In spite of this possibility, conduct on the part of the public employer, patterned after the Act, seems the preferable direction. The problem then becomes one of determining which procedures to follow and which referees to use in administering such policies without benefit of the statute and without the advantage of the National Labor Relations Board administrative machinery. Such questions are most likely to arise in connection with bargaining units and the designation of representatives. (See Chapters 8 and 9.)

Applicability of Industrial Experience

An important question which needs consideration, both by institutions subject to the National Labor Relations Act and those which are not statutorily covered, is the extent to which the industrial pattern of collective bargaining fits the academic scene. The experience of the National Labor Relations Board is largely industrial in character. The Board has never had jurisdiction over public agencies. Except for meager experience with a few profit-making educational institutions, the Board, until recently, was a total stranger to academic employer-employee relations. Such academic negotiations as have occurred and as have been subject to state statutes or local ordinance have been predominantly at lower levels of education and have seldom been above the junior college level. Most of the field is somewhat unplowed and lacking in well-established precedents. Any institution of higher education faced with a request for union recognition would be well-advised to look carefully at both the immediate questions in its own organization and the possible precedent-making character of its decisions and actions for the rest of higher education.

Public and private institutions of higher learning, particularly the

larger ones, have more in common with each other than either has with industrial organizations, which have heretofore been the most frequent locale of National Labor Relations Board decisions. Higher education, in total, including the private institutions, in the public eye may be more closely affiliated with public service than with profit-making industry. Unless institutions appearing before the National Labor Relations Board persuasively present any particular needs and characteristics of higher education, it may be expected that the Board, in applying the National Labor Relations Act to higher education, will follow closely the practices already developed in profit-making industry. If higher education as a whole feels this is proper, fine. But if education, as a whole, feels there is a need to tailor these practices to meet particular problems related to negotiations by institutions of higher education, this should be made known in each case. Only if this need—if it exists—is made known, will the National Labor Relations Board be well enough informed to establish an acceptable pattern of organized employer-employee relations for academic institutions.

Possible Conflicts in Industrial Experience for Public Institutions

The pattern established in profit-making industry, which presents the most likely conflict for public institutions, lies in the classification of items for bargaining. The one-time concept of the state as the sovereign who ruled his relations with his own employees in an autocratic (albeit sometimes benevolent) manner has been modified greatly in recent years.[2] Nevertheless, vestiges of this concept of sovereignty in the employment relation remain and are likely to continue. Just what this means in terms of items which may not be bargainable and in terms of the authority given to the public negotiators varies among the states. The statutory limitations upon a public institution which are significant to its employer-employee relations, and particularly to the extent of its sovereign obligations, should be carefully defined in advance of any negotiations. This involves answers to such questions as:

What items of wages and working conditions are within the authority of the institution?

What level of authority may the institution exercise on these items?

[2]For a discussion of the doctrine of sovereignty in relation to employee relations, see Felix Nigro, Chapter 2, *Management-Employee Relations in the Public Service*, Public Personnel Association, Chicago, 1969.

What authority can appropriately be delegated to an arbitrator in the final resolution of grievances?

What authority can appropriately be delegated to an arbitrator on other matters?

What benefits require legislative approval?

What approvals are required in wages which are external to the institution?

Can retroactive wage commitments be made?

Can commitments be made against funds not yet appropriated?

What statutory provisions exist in respect to such matters as veteran's preference, citizenship, residence, seniority, union security, work stoppages, etc.?

What reservations are necessary to meet established statutory or civil service requirements, if any?

The answers to such questions vary from state to state. A public institution must determine the extent of nonbargainable items (or at least those beyond the bargaining authority of the institution's administrative officers). These must be identified at an early stage and before commitments are made.

No-Strike Clauses

An almost certain area of conflict between the private pattern and public institutions is in the protection of the right to strike (or take a strike). The fact that a few states, in recent times, have expressly stated that some public employees have the right to strike[3] only serves to emphasize that in most jurisdictions there is no such right. If there is no right to strike, the inclusion in an agreement of a no-strike-during-the-life-of-the-agreement clause may later prove embarrassing. It may be argued that inclusion of such a clause implies the possibility of a strike at the expiration of the agreement and also implies that such a right may be obtained by bargaining.

If such a no-strike clause is included in the agreement, and if a strike does occur at expiration, this clause may present an obstacle to legal action in respect to the strike. On the other hand, some persons argue that the inclusion of a no-strike clause produces a psychological stabilizing effect during the agreement which offsets the later possible problem at time of expiration.

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[3]Hawaii, Pennsylvania.

Union Security

Another source of likely conflict between public institutions and the private pattern is in the area of union security. Many students of public administration feel that any concept of mandatory union membership is repugnant to public employment and irrelevant to merit employment. The National Labor Relations Act prohibits the closed shop in private employment but permits (1) compulsory maintenance of membership once an employee has joined a union; (2) the union shop, e.g., a requirement of union membership within a given period after hire and subject to certain prescribed conditions; and (3) the so-called agency shop, where an employee who does not wish to join is required to pay the union an agency or service fee (normally the amount of dues), presumably for representation services rendered.

Merit system administrators generally appear to feel that there is a conflict between merit employment and the union shop, although some institutions have entered into union shop arrangements, and a very few have actually evaluated union membership as a merit factor, at least in promotions. The agency fee, in recent times, has been accepted by some public institutions and has been authorized in some state laws, but it is also currently under attack in some cases under litigation in the courts. Many exponents of merit employment view the agency shop as the equivalent of paying a third party for a public job.

Industrial experience suggests that union security arrangements contribute to stability of employee leadership and representation. Most public merit systems do not recognize this factor. The conflict is likely to continue until the merit systems do accommodate to union security, or until it is empirically demonstrated that union security is not necessary to stability of employee leadership and representation in public employment. If organization for the purpose of negotiating conditions of employment moves forward in academic occupations, as it seems to be doing, an interesting question arises as to the relative importance and impact on each other of the long cherished academic freedom and tenure and a newly cherished union security.

The mildest and most commonplace form of union security is the dues checkoff. Here, again, it is important for the public institution to be sure of the statutory provisions. Under the National Labor Relations Act and in private practice, the dues checkoff normally is extended only to the exclusive bargaining representative. To extend dues checkoff to a minority organization, particularly at a time when there

is an exclusive representative, would tend to defeat the stabilizing purpose of the checkoff and possibly convert it into an instrument of disruption. In public institutions, some statutory authority for making dues checkoff from an employee's paycheck may be required. There are some states where this statutory authority makes the checkoff mandatory upon the request of the employee, even for a minority or raiding union.

Arbitration—Extent of Delegation

Arbitration for the public institution presents not only a basic statutory question, but also an operational policy question. The basic statutory question is one of whether a public responsibility, i.e., the establishment of public wages and working conditions, can be delegated by the public authority to a private arbitrator. The extent to which this delegation can be made must be determined from the statutes which govern the particular institution. The policy question is whether such a delegation is wise from an operational standpoint. Industrial experience and practice, in general, favor arbitration as routine procedure for all disputes which arise as to the interpretation and application of an agreement during its term. For other disputes, including the renewal of agreements, industrial experience and practice point toward the use of arbitration only in the unusual situation and then only rarely and as a last resort or impasse resolution type of procedure. In industrial experience and practice, arbitration is regarded as a corollary to stability and a commitment to no work stoppages during the life of the agreement. Within the framework of a well-written agreement, resort to arbitration as the routine way of disposing of disputes over interpretation and application works very well and presents little problem of infringement on management or employee prerogatives. The contrary, however, is believed to be the case in the original framing or reframing of the provisions of the agreement, itself. In this case, there is no limiting framework within which the arbitrator must make his decision, except possibly the outer boundaries set by the demands of the negotiating parties. Resort to arbitration as a regular method of resolving disputes of this sort may breed irresponsibility in making demands and inflexibility in negotiations.

Academic—Nonacademic—Student Relations

There is not any known counterpart relationship in industry which quite matches the relationship among faculty, nonacademic employees,

and students, as these particular groups interface with each other in institutions of higher education. There have been instances in which student groups or faculty have allied themselves with nonacademic employee organizations and given various forms of support to nonacademic employee demands. The more serious problem is the other side of the coin and the *quid pro quo* support which some activist student organizations may expect of employees. The relationship of the three groups also is a factor to be considered in the definition of bargaining units. In general, the divergence of interests of the three groups is such that an institution, wisely and appropriately, may discourage student involvement in its employee relations. For those institutions subject to the National Labor Relations Act, the provisions of that law relating to boycotts and other forms of sympathy support are, in all likelihood, applicable to the relations between faculty and nonacademic groups.

Concerted Activities—Discipline

Employees of private educational institutions of higher learning now have a statutorily protected right to engage in concerted activities for their mutual aid[4] and may not be disciplined or other action taken against them for the legitimate exercise of this right. This is a broad right, which includes the withdrawal of services. Most employees of public institutions, as indicated above, have a right to engage in more limited concerted activities, which, in most cases, does not include the withdrawal of services. It is important to remember, however, that public and private employees have no right to engage in illegal concerted activities. Except for those few jurisdictions where the right to strike has been expressly granted, a public employee who absents himself from work in concert with other employees is subject to discipline in exactly the same manner as any other employee who absents himself from work without approval.

[4]Section 7, National Labor Relations Act, as amended.

CHAPTER 5

WHY EMPLOYEES JOIN UNIONS

Hugh P. Avery

Why do employees join unions? It is almost impossible to provide a stock answer applicable to all organizations. However, experience shows that there are a number of reasons, any one, or any combination, of which is of sufficient seriousness to bring about an organization attempt.

It is unfortunate, but nevertheless true, that too many top level administrators in both education and industry fail to recognize those elements or weaknesses in their employee relations program which lead to organization. "We don't have that problem here" or "We're not guilty of that" are the responses of many administrators. Such responses substantiate the statement made by a national union leader: "Unions don't make trouble; they merely find it."

It is incumbent on educational administrators to listen to the reports of those close to the staff, for example, Personnel Officers and supervisors, and to take the necessary steps to correct substantiated inequities or weaknesses in their personnel programs. Unionization of employee groups, in a large number of instances, is the result of management's failure in the area of human relations.

It would be extremely difficult to list the reasons leading to unionization in any order of importance, as this order changes from institution to institution. The following major reasons for unionization are given without any attempt at ranking.

Inequality of Bargaining Power

Employee groups, faculty, and staff, alike, turn to union membership because they feel such an affiliation greatly increases their ability to

secure changes in the terms and conditions of their employment—changes which have not been, or which they believe could not be, accomplished through individual bargaining. Unorganized groups observe, with grave concern, the gains made by collective action on their campus, as well as in areas external to their campus.

Staff groups in many institutions see a distinction made in their status through the use of the organizational structure term, "nonacademic personnel." They resent this negative distinction, for they consider their support role to be vital to the achievement of the academic goals of their respective institutions, and, in their opinion, this contribution has not been fully recognized.

Wages, Hours, and Employee Benefits

Wage and salary inequities, both internal and external, have long been a major reason for motivating employees to join unions. It is a serious problem in most institutions of higher learning, particularly in highly industrialized areas. The wise college administrator should be aware of wage and salary developments in the immediate labor market. Through periodic salary surveys, bulwarked by continual review of his own institution's wage and salary relationships, he should make a sincere effort, within the means at his command, to keep abreast of the community developments. Failure to do so will mean that his institution will be forced to employ the "bottom of the barrel"—those individuals no one else wants and who, because of their inefficiency or lack of skills, seek a union to provide protection for their lack of ability.

Concern also should be directed toward employee benefits. Every effort should be made to offer a benefit package which, in its entirety, is comparable to that offered in the community. For example, many institutions of higher learning have the ability to offer a unique benefit which does not exist with their industrial counterparts. This benefit is free or reduced tuition extended to staff and to members of their immediate families. This highly-prized benefit will offset, in part, an institution's inability to provide increased benefits under life, medical cost, and other similar insured benefits. This approach, however, cannot, or should not be, used to completely supplant increased benefits.

Working conditions generally are good in colleges and universities. However, isolated situations can be the basis for organizational attempts. Locker rooms, lunch room facilities, parking areas, and safety standards may seem too isolated to be causes for concern, and yet each,

in its time or cumulatively, has been the dent in the armor of an otherwise good personnel program. New buildings with the most modern staff facilities, on the surface, would appear to be the mark of good staff relations. But, in the creation of such facilities, an inequity may be created—the 30-year old building may have 30-year old staff facilities.

Psychological Appeal

Union membership has, since the early days of the labor movement, provided individuals with the ability to satisfy certain psychological needs. In this area, Abraham Maslow has ranked the basic human needs in ascending order as follows:[1]

1. Basic physiological needs (survival)
2. Safety and security needs
3. Love, affection, and social activity
4. Esteem and self-respect
5. Self-realization

Assuming that employees' lower needs are fairly well met, the higher needs of individuals must be satisfied. A union provides an outlet (1) for social activity and pent-up frustrations; (2) for building self-confidence; (3) for utilizing potential or dormant leadership ability; and (4) for realizing personal satisfaction of status attainment or recognition.

Any attempt on the part of an institution to meet these psychological needs would involve a program as wide and varied as the number of staff personnel. Most certainly, however, bowling leagues, credit unions, social groups, and other employee organizations are a part of the answer to meeting such needs. There should be early recognition of leadership qualities in employees. Also, possible promotion of those so recognized to supervisory jobs should be seriously considered, if other required attributes are present. A working policy of promotion from within an institution and the use of career ladders within its wage and salary program provide excellent avenues of recognition for individuals. Lack of such opportunities creates a dead-end job structure, which, in turn, creates employee dissatisfaction and unrest.

Union membership also satisfies, in large measure, an individual's

[1]A. H. Maslow, "A Theory of Human Motivation," *Psychological Review*, Vol. 50, 1943, pp. 370-396; and A. H. Maslow, *Motivation and Personality*, New York: Harper & Brothers, 1954.

desire to have a voice in the decisions which affect him as an individual, as remote as this voice may be. Through union membership, he feels he is personally participating in the management of the organization, as well as in a form of self-government.

An employee also may feel that joining a union is "the thing to do," because all of his friends and neighbors are union members. Union membership thus becomes a necessity as a result of peer pressure. Many recent faculty organization endeavors appear to fall into this area. However, even when such pressure is exerted, one or more of the other reasons for union affiliation must exist to some degree.

Personal Security

In a sense, this reason for union membership is related to the first item described—inequality of bargaining power. Unions offer a degree of protection from indiscriminate termination of employment, which an individual alone does not possess, since all unions seek to provide in their agreements job protection for employees subject to layoff. Additional protection also is provided against unwarranted discipline and discharge through the grievance machinery.

In many unorganized employee groups, the procedure for an individual to follow when he feels he has been wronged is either nonexistent or most inadequate. The major inadequacy is the lack of a spokesman for the individual. A properly drawn grievance procedure provides not only formal machinery, but also a competent employee spokesman. Institutions with unorganized groups would be well advised to institute a workable formal grievance procedure for their unorganized groups, incorporating the necessary protective devices for the employee.

Experience has shown that in unorganized groups, employees are, at first, reluctant to use grievance procedures. It is, therefore, incumbent upon the institution to encourage its use until the employee group can determine that it is a workable, sincere procedure which operates without repercussions on an employee. Such a procedure provides an additional benefit to the institution. It becomes a tool or device to audit the effectiveness of the personnel program in practice.

Management Practices and Philosophy

As has been indicated, a large number of union organization attempts come about as a result of a management failure in some area of

human relations. The two major areas of management failure occur in communications and supervision.

Communications, in the area of human relations, must be a two-way operation. In many educational organizations, it is "one-way"—from management down to the staff—with little or no attempt at feedback or "listening" in an organizational sense. In a large number of educational organizations, the communicative process is nonexistent, except for the superior-subordinate type, dealing with day-to-day problems.

The large mass of employees has no knowledge of the plans, problems, or concerns of the administration or management, despite the fact that knowledge of status, that is, "Where do I (we) stand," good or bad, group or individual, is one of the best motivators of human behavior. The employee group often learns of organizational activity through the grapevine, student newspaper, or outside media and not directly from top administration.

A college or university with a good personnel program, supported by an effective communications program, should have less difficulty in meeting an attempt at unionization. Therefore, it is vital for those institutions which are presently unorganized to develop a communications program *now*. A program instituted after the union has raised its head loses much of its effectiveness as a result of the circumstances under which it was initiated. An effective employee communications program is a vital and important component of the personnel program, even in the absence of union influence, if a high level of work force efficiency is to be obtained. Employees not only want to hear from the administration, but they work better when there is good communication with them.

The subject matter or medium utilized in initiating a communications program is of little consequence. The important point is that it be started before the threat of a union so that it will have attained credibility with the staff, if it becomes necessary to use it during a union organizational attempt.

The medium of communications utilized is important, although its importance is less prior to a union campaign than upon onset of such a campaign. College administrators should seriously study the possible utilization of staff and supervisory meetings, bulletin boards, letters to the home, and house publications, to mention only a few, to determine the combination best suited to the individual campus.

The second major weakness lies in the whole general area of supervision. Poor supervisory practices too frequently drive the staff into seeking a union to correct supervisory failures.

Lack of knowledge of the job, inadequate training in supervisory skills; demonstration of favoritism, that is, in job assignments and in distribution of overtime; unwillingness to listen to complaints; lack of intelligent instructions or directions; lack of knowledge of personnel policies and available benefits—all of these are conditions which, if they exist in the administration's "front line," may lead, if not corrected, to unionism.

The supervisor is the personification of the organization to staff members. How he relates to his employees determines in large measure their opinion of the organization. A positive interaction sells the entire organization to employees; a negative reaction will undermine even the best personnel program or top administration philosophy.

The supervisory problem is compounded by lack of communication or grievance procedures in unorganized groups so that it is possible that problems go unchecked and even grow more serious without notice by the administration. A study of turnover or exit interviews may reveal an indication of employee dissatisfaction, but nothing surpasses face-to-face contact for firsthand knowledge. This can be obtained when individuals involved in the personnel function leave their desks and spend time with the various staff segments.

Another communicative "feedback" tool, which unfortunately is not used extensively by educational organizations, bears a variety of names, such as employee audit and morale survey. Organizations which have utilized this device have found it to be most meaningful, but most organizations are reluctant to use it because they either are fearful of knowing the truth or feel they can do nothing about any negative findings. If the latter is true, it would be well not to conduct such an audit, for failure to report the results to the group surveyed, or to take action, dooms the entire undertaking.

Additionally, the placement of the personnel function in the organizational structure is also of great importance. If the personnel function reports to an Assistant Controller or an Assistant Vice President, several rungs down the administrative ladder, it leaves no doubt in the minds of staff members as to their relative importance in the scheme of things on a particular campus. Ideally, the personnel function should report directly to a senior level of management—either to the President or Chancellor or a member of his most immediate staff. Every college and university is composed of people, the organizational component with which the personnel function is concerned. Their problems cut across the lines of the organizational structure and thus should have the objective supervision of the top administrative officer. Fur-

ther, such placement leaves no doubt in the minds of the staff as to the importance assigned by the administration to the "people" aspect of the particular institution.

In summary, it is one of the administration's major responsibilities to discover and correct those weaknesses in its organizational structure, personnel program, and philosophy which, as briefly decribed above, can, and will, lead to unionization on the campus.

CHAPTER 6

UNION ORGANIZATIONAL DRIVE

Hugh P. Avery

As a brief note of introduction, it should be pointed out that union campaigns have a spectrum all their own. At one extreme, they can be quiet and dignified, and, at the other extreme, they can be vicious and violent. The factors which determine where in this spectrum a particular campaign will fall include: (1) the history of the employee relations of the group being organized; (2) the individual union organizer and his personal philosophy; (3) the particular union and its philosophy; and (4) the administrative policy decision concerning unionization.

In this section will be briefly described the union activity which the college administrator may reasonably expect to encounter during the campaign to organize the personnel on the college campus.

A union organization drive is generally divided into several component parts, highlighted at some point by a demand for recognition, and culminating in a final decision on the recognition demand, utilizing one of several procedures, including representation election. These procedures will be covered in a subsequent chapter.

Union organizational drives occur more frequently as a result of internal pressure created by one or more of the situations or conditions described in Chapter 5. In a large number of cases, union organization is requested by the employees. In a few instances, the institution may present what appears to be a "plum ready for picking." However, regardless of the reason, the union campaign in the support staff areas is divided into the following six major parts or steps:

1. Survey
2. Leadership recruitment and preparation
3. Overt activity

4. Recognition demand
5. Election campaign
6. Final drive

The organizational activity of faculty and professional groups normally will have the same basic parts, with the exception that the first two elements do not assume the same degree of importance as they do with less sophisticated groups. Professional groups generally present the collective bargaining agent (or union) with an existing organization, complete with leadership and a degree of preparation.

Although there is undoubtedly some undercover activity, or "feeling out" of other members of the group, such activity is considerably less than with the staff group and is performed initially by the group members themselves. Overt activity thus becomes a reality much sooner than in the traditional union organization campaign. If two or more professional collective bargaining groups are competing for representation rights, then leadership recruitment assumes greater importance for each group.

In light of the above comments, the following briefly describes the campaign segments which are usually found in a classic union organization endeavor.

Survey

Regardless of the reason for the union interest, the union generally will make a thorough study of the situation before the first overt move is made. It will attempt to secure information concerning the following points:

1. Readiness of the group for unionization
2. Vulnerability to organization efforts
3. Current personnel policies and procedures
4. Existing employee benefit programs

In substance, the union will secure all the information possible about the college or university. Union representatives will not limit their contacts to employees, but they will spend many hours observing the campus and talking with neighboring service station attendants, waitresses, bartenders, and shopkeepers, as well as with community leaders and townspeople.

Upon completion of the survey, the representative(s) will have gath-

ered considerable information which will be of importance in an organizing campaign, but they will have remained relatively quiet while so doing. Employees, generally, will not have been openly approached on the subject of union organization.

Leadership Recruitment

If conditions appear favorable, the next step will be to enlist the interest and support of a few employees—for example, those who are respected by fellow workers and who have influence in the group under consideration. The organizer will try to avoid "gripers," "soreheads," or those motivated by revenge. In this connection, one union organizer's handbook states: "If there is any rule at all, it is that contacts are *not* made by suddenly appearing at the gate with a leaflet urging employees to sign a union authorization card. . . ."

The small group of campus employees whom the organizer will eventually select will form the nucleus of an internal organizing committee. This committee will generally represent every important segment of the employee group under consideration. The employees selected will continue to meet with the organizer, feeding him employee complaints. Justified grievances will be separated from petty matters which would have little or no effect during a campaign. During this preliminary and undercover aspect of the campaign, the organizer is provided with an excellent opportunity to describe how similar problems have been resolved through union organization at other locations. Subsequent meetings of the group will be utilized to add new committee members and to gain additional information regarding the institution's operations.

Overt Activity

The first open move on the part of the union is generally a "feeler" campaign. This is an attempt to determine not only the amount of employee interest in a union, but also interest in a specific union. The union may initially distribute a single page, mimeographed throw-away, with a reply card attached. The first throw-away is usually very general and details what a union can do for the employee group. It is highly impersonal and may not even mention the target institution by name.

The discovery of one of the throw-aways or reply cards in a locker

room or parking lot may be the first indication that an organization campaign is under way, although rumors during the leadership recruitment phase may also be another clue.

The union may find a lack of sufficient interest following initial attempts and drop further activity. However, if the leaflet distribution continues, it probably indicates an encouraging show of employee interest and the administration can assume that they are, or shortly will be, engaged in an all-out organizing campaign.

This phase of the campaign brings the union activity into the open. Campaign strategy is drawn by the professional union organizer, but in close liaison with the employee committee. The committee will continue to feed him complaints and alleged wrongs. This material will be added to that which the union will supply—most notably the benefits which the union has obtained for other groups. The accumulation of information will form the basis of the union printed material used during the union's campaign.

Another aspect or approach of this phase will involve employee meetings of all kinds, from small informational gatherings to large social-type meetings. The latter are usually held at a location convenient to the after-hour or free-time schedules of the employees.

Personal visits by employee committee members will undoubtedly take place on the job, during coffee and lunch periods, and in the employees' homes. In fact, depending on the size and geographical distribution of the group, the union organizer considers visiting a worker and his family at home as one of the most important parts of an organizing campaign. During the house call, the union representative will be able to speak to the employee as an individual, instead of a nameless part of a collective group. He will endeavor to involve other members of the worker's family in the discussion, particularly the wife or husband, since the entire family will be affected by the outcome of the election and may well have an influence on the employee's vote.

Demand for Recognition

Regardless of the methods utilized, the sole purpose of the overt activity stage of the campaign is to secure sufficient signed membership cards to enable the union representative to present the administration with a Demand for Recognition. Although this aspect of the union's campaign is covered in greater detail in a subsequent chapter, it should be pointed out that, regardless of the institution's policy on

recognition, it is generally in the best interest of all concerned—employee group, student body, and faculty, as well as the administration—to insist on a representation election. To do otherwise implies that the administration is imposing its will, or thinking, on the employee group. It is a decision which employees should make in the democratic fashion of a secret ballot.

Election Campaign

This stage of union activity is entered, if the employer rejects the demand for recognition and, as already indicated, requests a determination of majority interest utilizing Representation Petition or Consent Election Procedures. If such determination is to be made under the auspices of the National Labor Relations Board (NLRB), there is, in most cases, a lull in union activity pending results of the hearing(s) held by the Board. The Board usually will set the election for a date within thirty days after the date of its decision. During this period, the real and basic campaign is conducted.

The theme of the union campaign in almost all aspects is ***more*** and ***change.*** The union campaign continues to stress these items in many and varied ways during the final phases of activity.

As an added inducement to signing a membership card at this point, the employee may be promised he will not have to pay an initiation fee and may even be given temporary waiver of dues until a contract is signed. Recalcitrant employees may be threatened with loss of their jobs, if they do not climb on the bandwagon with a signed membership card. In many ways the union organizing campaign is similar to a political campaign. The most striking similarity is the manner in which the union will "promise" increases in wages, benefits, working conditions, or other aspects of employment.

The campaign in this next-to-the-last stage is nothing more than a stepped-up and expanded version of prior phases. The smart organizer will not have used his entire arsenal up to this point, saving considerable ammunition for the latter stages of the campaign. If it becomes a bitter campaign, the final stage may become highly emotional, with frequent accusations and insults, creating antagonism and bitterness which may remain long after the campaign has finished. The number of off-campus employee meetings will increase in the final weeks of the campaign. It may also be expected at this point that the union, having been able to secure home addresses, either from the signed member-

ship cards or from the NLRB,[1] will send letters to the home beamed to the interest of the family and, particularly, to the spouse.

Final Drive

The final days of the campaign can create severe problems for the inexperienced administrator. As the tempo of the union campaign increases, so will the published union material. Rumors of all kinds will be circulated, some of which may require an immediate answer. Thus, in addition to greatly increased union activity, the administrator skilled in labor matters learns to expect the unexpected.

[1]The NLRB has adopted a rule, which was subsequently upheld by the U. S. Supreme Court, requiring the employer to furnish the Regional Director with a list containing the names and addresses of all employees eligible to vote in the election. The Regional Director makes this list available to all parties to the election. The rule applies to all election proceedings except those involving recognition or organization picketing. The "Excelsior" rule was originally promulgated in Excelsior Underwear, Inc. 156 NLRB (No. 111) and upheld in the NLRB v. Wyman-Gordon Co. (1969) U.S. Supreme Court.

CHAPTER 7

MANAGEMENT'S RESPONSE TO A UNION ORGANIZING CAMPAIGN

Hugh P. Avery

[*Author's Note:* The subject matter of this chapter is highly volatile and needs considerable discussion. At the outset, the impossibility of providing concrete and detailed suggestions and guidelines for all situations should be recognized. The author is also faced with the dilemma of describing the tools of a strong pro-administration campaign and then having this book, as well as himself, labeled "anti-union." On the other hand, an attitude of "lie down and play dead" would not fulfill the charge given the authors to produce a book which would provide helpful information and assistance to those individuals who are new to the problems of labor or union relations.

There is a wide divergence of philosophy in this subject area, when public and private universities and colleges are compared. It is hoped that the matrial which follows will be of assistance to representatives of both types of institutions, regardless of their personal or institutional philosophies on this difficult subject of the institutional response to unionization.]

The responses of institutions of higher education to a union organizational campaign cover a wide spectrum, from no opposition at one end to a highly organized and aggressive campaign of opposition at the other end.

The position in the spectrum assumed by a particular institution depends on many factors. Some of the more prevalent determinants are (1) the history of personnel relations; (2) the labor relations philosophy of the governing body and the top administrators; (3) the degree of involvement with the broad general public; and (4) the public relations aspects of the situation or issues at a specific point in time. These and others, singly or in combination, will determine the degree of opposition rendered to a union organizational drive.

Experience indicates, in most cases, that a position at either extreme

of the spectrum is improper and difficult to defend. As will be indicated later, in the majority of organizational drives, most of the work force involved will be neutral at the outset. Employees are entitled to some information and insight into the thinking of the institution toward union representation. On the other hand, an "all-out" campaign, even if successful in turning back the union's bid for representation, may well leave wounds which will be long in healing.

Therefore, it is suggested that a middle-of-the-road "pro-management" approach, rather than an "anti-union" one, be adopted. If the personnel program is modern in its philosophy and if wages and benefits are reasonably competitive with those offered by other employers in the labor market and are administered fairly and equitably, or, in other words, if the personnel house is in order, a calm, objective, medium-key approach is considered best. The nation looks to its educational institutions for leadership in all areas. The field of labor relations offers an excellent opportunity for this leadership.

Administration's Response

However, there are certain general comments which should be made concerning the administration's response to a unionization campaign. These apply in all situations.

Don't Panic

It is perhaps a normal reaction, particularly to the uninitiated, to assume that almost all of the group being organized is in favor of the union. National Labor Relations Board (NLRB) statistics prove that the fatalistic approach of believing that unions always win is incorrect. Unions lose almost as many elections as they win. Normally, a small, hard core group will favor the union, and another small group will oppose it. The majority will be neutral, or "on the fence." This is the group which both the union and the university or college will be courting.

Play It Cool

As indicated above, institutions should not be pessimistic, but, on the other hand, they should not be overly confident. Institutions should be as objective as possible, and, at the same time, they should be very wary of all sources of information, including the supervisory or management group. It is a common fault to interpret activity in the direction of optimistic hopes. If, during the campaign, a supervisor reports

that no more than twenty-five percent of his group is in favor of the union, probably this estimate should be doubled; supervisors generally believe that fewer people have complaints than is normally true.

Although emotions should have no part in the campaign, they cannot be eliminated. Extreme care, therefore, should be taken to control actions and/or statements which may later prove to be harmful to the institution.

Secure Experienced Assistance

The college administrator may be an expert in finances, fund raising, or even personnel administration, but the chances are good that union relations and the accompanying body of legal requirements and pitfalls are a great unknown to him. There is no reliable blueprint or patent formula which will apply to all cases. The institution's history and the employee group and its particular problems make each experience unique and hence, requiring specific and tailored advice.

Even those institutions with personnel experienced in labor matters should consult legal counsel with a labor relations specialization. General house counsel may be inadequate for the job at hand, particularly if substantial efforts are to be applied to counter the organizational drive.

Plan Campaign

If it has been determined that a serious counter campaign is to be undertaken, the institution's efforts should be carefully planned in advance. The plan should determine and include the issues on which the campaign will be based; the media to be utilized, such as meetings and mailings; a proposed timetable; individuals who will participate; and designation of responsibility for the direction of the campaign. This latter item is most important and should be assigned to a single individual.

The campaign should not "peak out" before the day of election. Ideally, it should reach its high point in the 24-hour period immediately before the election and continue into the day of the election.

Prepare Organization Log (or Diary)

Incidents and activity of both the union and the college having a bearing on the campaign should be reported to the individual responsible for the conduct of the university's campaign. These incidents should be entered into a log in chronological order. This log will be of considerable help in planning later activities of the campaign and

will provide a ready source of information for questions which may arise later. It may also prove to be of valuable assistance should it become necessary to defend the action of the institution at a later date.

Conduct Institutional Campaign

The conduct of the institution's campaign is dictated, in large measure, by its basic labor relations philosophy and its decision on a specific campaign. It may, for example, decide not to oppose, in strength, unionization of the maintenance staff but oppose organization of the clerical group.

There is little that can be done during the early phases of the union's campaign. If the initial union throw-away does not identify the institution, it is best not to reply to it. There is no need for action by the university until it is determined that the university is involved in a serious organizational endeavor. Despite the lack of formal activity, the institution should take steps during the early period of a possible organization attempt to keep abreast of all developments.

If it has not already been accomplished, this early period of a potential campaign is the time to formulate a labor relations policy applicable to the specific situation and to draw up a preliminary plan for the institution's campaign. The final details of the plan cannot be drafted until the date for an election is established.

A properly drawn statement of labor relations policy can be utilized to great advantage throughout the campaign. It should be conveyed to employees early in the institution's campaign. It may well be the subject of the first official statement of the administration. Unless there are compelling reasons, nothing will be gained by a flagrant or violent anti-union policy.

Experience has shown that employees react (1) more favorably to a campaign of moderate opposition and (2) to a policy which states that the institution recognizes the freedom of the individual and the group to decide the question of union representation. The individual freedom also includes the right to be free of threats, coercion, or force in any fashion from either the union or the university.

Educate Supervisors

The comments made in Chapter 5 concerning the role of the supervisory force in creating the desire for a union are still pertinent. The supervisor is the institution to most of his subordinates. A negative reaction to supervisors greatly weakens a pro-administration campaign, for, in the eyes of the staff, supervisors ***are*** the administration.

Supervisors, if properly educated, can be the eyes, ears, and, in many instances, the voices of an institution's campaign. They must be alert in what they see, discriminating in what they retain, and highly objective in their total personal conduct throughout the campaign.

As soon as it is determined that a serious union campaign is under way, all supervisory personnel in the affected areas should be advised of acceptable supervisory conduct during the period of organizational activity. In addition, supervisors should be provided with the necessary information on a variety of subjects so that they will be able to answer with authority the questions which will be raised by their employees. They should be reeducated regarding the entire employee benefit program and related subjects.

The following list of permissible administration activities will provide additional areas for supervisory review.

Permissible Administration Activities

In general, the private college or university, under NLRB rules, has considerable latitude in its effort to counter a union organizing drive, provided it does not:

1. Threaten the employees with reprisals;
2. Coerce them in any fashion; nor
3. Promise them benefits for rejecting the union.

These rules apply with equal force to the actions of the supervisory group. Application of the above regulations means that the administration can engage in the following types of communications:

1. Discussion of present benefits, being careful to avoid discussing any unpublished benefit plan changes which may be construed as a promise or a threat;
2. Comparison of wages, benefits, and working conditions with other employers, being certain, however, that all comparisons are factual and accurate;
3. Discussion of disadvantages of union membership, including initiation fees, dues, fines, assessments, restriction on individual freedom, and the possibility of strikes and loss of wages;
4. Discussion of union structure, policies, and union leaders, being certain of the facts;
5. Comment on, and correction of, false and misleading union statements;

6. Advisement of employees that although they may have signed a union pledge card they are not required to vote for the union; that, in the secrecy of the voting booth, they may vote as they believe and not as a reflection of pressure by a friend or the union organizer;
7. Advisement of employees regarding the importance of voting;
8. Adoption and enforcement of a broad "no-solicitation" rule during actual working time; this rule cannot be enforced during time normally considered to be an employee's time, even though such time may be paid for (for example, coffee breaks, lunch periods, as well as before and after scheduled hours of work);
9. Continuation and enforcement of normal work procedures and rules, disciplinary procedures (including discharge), layoffs, and job and shift assignments, provided that such actions follow customary practice and are undertaken without regard to union or nonunion activity;
10. Scheduling of talks to groups of employees on the institution's property and on its time (Such meetings should not include small groups in private offices nor be scheduled within the 24-hour period before the election.); and
11. Mailing of written material to the homes of the employees.

Illegal Activities

The administration cannot:

1. Do or say anything which might be considered as interfering with, restraining, or coercing employees;
2. Offer any inducements (even by implication) to persuade an employee not to join a union;
3. Discriminate against an employee because he is a union member or is taking part in union activities;
4. Inquire privately (or in small groups) about an employee's (or employees') union sentiments or membership (Management may listen if such information is volunteered, but may not ask questions.);
5. Threaten loss of job, reduction in wages, or possible discontinuance of present benefits;
6. Spy on employees or observe them to determine whether or not they are participating in union activities on their own time;
7. Display favoritism in any form, such as in giving shift or job assignments to those who are opposed to the union; or

8. Hold meetings, or mail letters to employees' homes to be received in the 24-hour period immediately prior to the election.

Recognition Demand

The handling of the university's response to the union request for recognition is most important. The institution's reply and its format and wording should be studied most carefully, and final determination should be made by the institution's labor experts, following consultation with counsel, or personally by counsel. Failure to reply may be interpreted as an indication of fear and will be capitalized on by the union. A poorly worded response may likewise be put to advantage by the union.

If the union organizer should make phone calls or an unexpected visit to any administrative official at any time during the campaign, he should be treated as any other unannounced individual and his visits should not be the cause for panic. As appropriate, he should be referred to the proper official.

It is important and proper that any contact with union organizers be treated as any other business encounter, with a polite, firm, businesslike approach. Rudeness will only serve to engender hostility, and excessive friendliness may be misinterpreted as a willingness to enter into a union relationship or as fear.

If the demand for recognition is refused and NLRB proceedings initiated, the college may expect a flurry of union activity attempting to capitalize on the institution's refusal to recognize. This activity provides a good opportunity for the college to reply, emphasizing belief in the democratic method of selecting a bargaining representative and, perhaps, restating its policy, if the policy lends itself to this approach.

In most campaigns leading to an election under NLRB auspices, a lull in union activity may be expected until the date of the election is set. This period is ideal for the institution to review and finalize its campaign plans. It also provides the time to draft a series of letters or other printed materials which may be used later in the campaign, if the campaign plan calls for such material, thus eliminating the need to write hurriedly and under pressure of a deadline.

Once the election is established, the pace of the union campaign most likely will increase. Despite this quickening pace, a calm, reasoned and factual institutional approach, based on the main issues, should continue. Avoid, if possible, the many small or unimportant items which will undoubtedly arise during the campaign.

It has previously been mentioned that the administration should not "peak" its campaign too soon but should plan to hit its high point just prior to the actual election. Material utilized prior to the time when the election date is known should be used conservatively. Careful monitoring and analysis of published union material will enable the administration to determine which items must be answered and which can be held for a later time.

The institution should adopt and convey to the employees a policy concerning unionization early in the campaign. If worded and planned properly, this statement can be a major item in the closing days of the campaign.

Major Campaign Media

There are a number of media, including meetings and letters, available to the college administrator in conducting the counter campaign. The following are brief comments on the more effective methods.

Meetings

The institution has the right to hold employee meetings on its property and on its time. Such face-to-face meetings provide an excellent medium for man-to-man discussion, providing the group is not too large. The representative of the institution should be one who has ***earned*** the respect of the employee group. He should be thoroughly knowledgeable in all phases of personnel policies and procedures and should be prepared to answer any and all questions, directly, honestly, and, above all, sincerely. If a question is asked for which he does not know the answer, he should get the answer for the employee or group.

In planning his presentation, the college representative should consider that the audience may contain one or more individuals who will attempt to embarrass him, degrade the institution's position, or create trouble in other ways. The representative should be prepared to handle such an individual. A sincere, but firm, and calm outward manner (possibly interspersed with humor) is the best approach. Under no circumstances, should the university representative become upset. He should control the meeting by making a well-planned, direct opening statement.

Meetings should be of short duration and conducted in a friendly and informal fashion. Questions, for the most part, should be limited to the subjects discussed in the presentation. If the employee group contains a large proportion of individuals who are more comfortable with

a foreign language, an interpreter should be utilized in a separate meeting.

No meetings should be scheduled in the 24-hour period before the election.

Letters

The sending of letters to each employee is a valuable and well-accepted tool in unionization campaigns. Unions and employers have both used this medium with great effectiveness. The degree of effectiveness from the institution's standpoint depends upon the credibility attached to such letters by the employee. The sincerity and honesty of letters greatly influences their acceptance. For maximum acceptance, the institution needs to establish this medium of communication before a unionization drive so that letters during a campaign are a part of a series and not something special or unusual initiated only in a time of crisis.

If letters are used, they should be addressed to the homes and personalized as much as possible. The size of the group and the relationship of the individual signing the letters to the receivers will dictate the extent of such personalization. In some situations, a personal salutation has been utilized in the belief that ***Dear Sam*** will attract more attention than ***To All Maintenance Department Employees.*** As valuable as a letter from a top administrative official may be in certain situations, it would be asinine for such an official, in a large institution, to use such a salutation, because the personal relationship does not exist.

A question-and-answer letter is effective at any time, but particularly so during the last week of the campaign. A final letter of summation should be mailed, with delivery to occur during the day prior to the beginning of the 24-hour period preceding the election. The effect of union participation on the family should be utilized in letters used during a campaign, since other members of the family will read them and possibly influence the employee's vote.

All such communications should be written at the recipient's level of understanding. Words and phrases which employees use and understand should be included. The content of a letter directed to the service employees, although on the same subject, should be on a considerably different level than one sent to the faculty or a professional research group. If a substantial segment of the employees speak a foreign language, identify these employees and enclose, in mailings to them, a translation in their language.

In general, the individual signing campaign letters should be the

administrative official closest to the group involved in the campaign. This could be the person assigned responsibility for the institution's campaign or the individual presenting the college's position in employee meetings. However, a letter from the President, the Chancellor, or some other highly ranked official(s) of the institution in the closing days of the campaign would make known, depending upon the labor relations policy, the interest and concern of the top administration regarding the results of the election.

There are, of course, many other media which may be used. These range from college bulletin boards through newspapers and radio. The use of the more sophisticated (and expensive) media is dictated by the size, geographical distribution, and importance of the group. No medium should be overlooked. The use of the broad range of available media is limited only by the imagination of the institution's campaign strategists and planners.

Summary

If it is the desire and policy of an institution to successfully oppose a unionization campaign, the following are the components most often found in a persuasive and effective institutional campaign.

Organization

To utilize an old cliché, "Plan your work; work your plan." To do otherwise leads to chaos and ineffectiveness.

Credibilty

The credibility of any communications program is based upon long-term use. All communications, past or present, should be on a straight-from-the-shoulder, honest, factual basis. Use facts which are correct, accurate, and up-to-date.

Concentration

Concentration should be on the real issues and on those employees who are "on the fence," or are the "silent majority" of the staff or faculty group. Do not try to convince hard core union supporters. Political campaigns are waged in this fashion. Take a cue from the politicians.

Diversification

Use all of the media available, providing those selected are sound, in good taste, and effective.

Initiative

An institution should not be a "reluctant dragon" but should keep the union so busy trying to find answers to its material that the union will not have time to level any worthwhile attack on the institution.

The best sales campaign ever devised cannot sell an inferior product. Thus, if relations with the employee group are poor, and if the personnel program leaves much to be desired, the best election campaign in the world will not sell the program, the administration philosophy, or the institution to the employees in a time of crisis. Thus, if the institution desires to oppose unionization, the time to begin the administration's effort is ***now***, with first, a sincere and objective appraisal of its personnel program and philosophy and second, by determining necessary corrective action.

CHAPTER 8

THE APPROPRIATE BARGAINING UNIT

Oscar S. Smith

Importance of Proper Unit Definitions

An appropriate bargaining unit which is truly workable and practicable is an essential ingredient in any collective bargaining arrangement. The extent of difficulty in reaching agreement on substantive terms and the degree to which negotiations move forward successfully may depend, in large part, upon the appropriateness of the unit. Agreement to a unit which follows other than an institution-wide pattern should not be entered into without full consideration of all circumstances. Equity among employees requires the maintenance of benefits, wage standards, and working conditions on a uniform basis for employees with like interests, skills, and responsibilities. Differences in benefits, wage standards, and working conditions among employees with unlike interests, skills, and responsibilities need to be relevant to the differences in interests, skills, and responsibilities or to community practices, or to some other understandable basis, if they are to be a successful part of a stable, workable employee-employer relationship. For instance, differences in benefits and working conditions might be feasible between biochemistry technologists and temporary construction workers but not between biochemistry technologists and medical technologists or between electronic technicians and laboratory mechanics.

The Cornell and Yale Cases—The Initial Precedents

The bargaining unit was one of the areas of controversy in both the Cornell[1] and Yale[2] cases. In Cornell, the National Labor Relations Board (NLRB) found that with the exclusion of supervisors and a few special groups (including some in earlier recognized units) an appropriate bargaining unit was all of the nonacademic employees of Cornell University within the state of New York. In Yale, there already was an existing maintenance unit which the University apparently had recognized and dealt with for some time without the benefit of a National Labor Relations Board proceeding. One party in the Yale case petitioned for a unit of the white collar employees of a single department within the College of Medicine. The representative of the existing maintenance unit requested that these employees be added to the maintenance unit. No organization sought to represent the employees of Yale in a Yale-wide unit. The NLRB dismissed the petitions, determining that the single departmental unit was not appropriate. There were a number of reasons for this: similar classes of workers were engaged in other departments; this department was neither geographically nor functionally separate from the college or from the institution as a whole; and employee benefits and personnel policies traditionally had been administered Yale-wide. The NLRB found that an appropriate unit would not result if the white collar employees in this one department were added to the existing maintenance unit on the grounds that there was an inadequate community of interest and insufficient justification for separating these employees from the other employees of Yale. Both the Cornell and Yale decisions recognized a community of interest—employer-wide—among the same and related classes of employees.[3]

An institution faced with a request for recognition might well be advised to review the bargaining unit determinations in the Yale and Cornell cases. These are the initial precedents and must be looked upon as good precedents from the standpoint of both employer and employees. If a unit sought by a Petitioner for recognition fits the NLRB reasoning in these cases and if the facts are similar, the Cornell-Yale

[1]Cornell, 183 NLRB 41.
[2]Yale, 184 NLRB 101.
[3]See, "Yale University and Yale Nonfaculty Action Committee, A Case Before NLRB," *The Journal of the College and University Personnel Association*, Vol. 22, No. 3, May, 1971, pp. 1-36.

decisions likely provide the basis for a sound unit position. However, if the facts are materially different, or if a requested unit does not fit the reasoning of the NLRB in the Yale and Cornell cases, private institutions would be well-advised to insist on a review by the National Labor Relations Board Regional Director and possibly a formal unit determination by the NLRB.

A public institution might not have similar access to the National Labor Relations Board but should pursue whatever alternate course is available for a considered workable resolution of the unit question.

Community of Interest

Small units of single classifications or departments normally should be guarded against. In most organizations, particularly the larger ones, there are certain broad occupational categories which embrace employees, whose interests, skills, and responsibilities may be identifiably different than those of employees in other similarly broad occupational areas. In a rather loose sense, the commonly used identification of some positions as blue collar (or manual) and others as white collar (or nonmanual) reflects such accepted differences. Exempt and nonexempt designations under the Fair Labor Standards Act (FLSA) and hourly and monthly payrolls are such indicia of differences. Differences in benefits, wage standards, and working conditions may be feasible among groups which are thus identifiably different in interests, skills, and responsibilities.

Such differences are neither feasible nor equitable in the absence of identifiable differences in interests, skills, and responsibilities. Just as it is not practicable (or possible) to bargain with two different representatives for the same employee, it is not feasible to divide a generally homogeneous work force into parts and to bargain successfully with different representatives for different parts. In short, fractionalization into multiple bargaining units of employees whose benefits, wage standards, and working conditions are normally similar is undesirable and possibly foolhardy. Fractionalization makes the maintenance of uniform and equitable benefit plans and working conditions difficult, encourages competition between employee groups, and may impede the reaching of agreement in negotiations. Any immediate short-term advantages which may appear to exist for either employer or employees in such fractionalization, in the long run, are likely to lead in the direction of chaos.

Units Based on Extent of Organization

Even in the absence of competing organizations, units based on the extent of organization at times have held some appeal for both employers and labor organizations. The latter have sometimes looked upon a unit of a single class as a foot in the door or an operating base from which to organize other employees. Employers have sometimes thought that, by recognizing a union for a particular class where dissatisfaction was known to exist, this group might become insulated from other employees and the organizational activity confined.

In its earlier years the National Labor Relations Board, itself, on occasion, subscribed to an extent of organization philosophy as not inconsistent with the expressed policy of the statute to encourage collective bargaining. All of this has now changed, and there is only a limited number of situations where single classes or other small groups of employees are apt to be found to constitute an appropriate unit under the National Labor Relations Act (NLRA).

The extent of organization, by itself, is now specifically foreclosed in that Act[1] as the controlling basis for determination of the bargaining unit. Consistent with the Act, the Kennedy Executive Order (10988) of January 17, 1962 established the Federal Program, and the Nixon Executive Order (11491) of October 29, 1969 provided that units must be established on the basis of "a clear and identifiable community of *interest* among the employees" included and that no unit should be established solely on the basis of the extent of union organization. It should be noted that this clear consistency of federal policy under both the Act and the Federal Program has not been uniformly carried over into state statutes where, on occasion, extent of organization is specified as a factor for unit determination.

Special Occupational Units Normally Recognized Under the National Labor Relations Act

Under the National Labor Relations Act, each of the traditional skilled maintenance and construction crafts normally will be established as a separate unit, if the employees wish, and if there is no long history of their inclusion in a larger unit. Even if there is such a history, these crafts, under appropriate circumstances, may be separated out by the National Labor Relations Board.

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[1]Section 9(c) (5) National Labor Relations Act, as amended.

Guard and Security Forces

Under the National Labor Relations Act, guards may never be included in a unit with the employees they monitor. Only a unit which is limited exclusively to guards is appropriate. Similarly, a union may not be certified to represent guards, if it admits to membership other classes of employees. These provisions were written into the National Labor Relations Act as a part of the 1947 amendments.[5] This resulted from an appraisal by Congress of experience under the 1935 Act. The 1935 Act did permit the inclusion of guards (involved in monitoring) in the same unit with other employees (those being monitored). The practical problem which had arisen under the 1935 Act was one of dual allegiance.

While the role of the security forces of colleges and universities may be somewhat different from the role of the plant guards who provided the experience base for the Congressional action, the separation of the members of such forces into bargaining units, independent of other institutional employees, seems a wise policy—and for reasons similar to those Congress found to exist generally in industry. There are situations, having their origin prior to the Cornell decision, in which private colleges and universities may have recognized unions which admitted other employees to membership as the representative of security forces. It may not be easy for these institutions to rescind this recognition. The National Labor Relations Act does not make representation of guards by a union which admits other employees illegal. Rather, it merely forbids the National Labor Relations Board to certify such a union as the representative. It follows, of course, that an employer could not be found guilty of commission of an unfair labor practice for refusing to bargain with such a union for a security unit.

Professional Employee Units

Professional employees normally do not have the kind of identifiable community of interest with nonprofessionals which warrants their inclusion in the same bargaining unit. The National Labor Relations Act permits the inclusion of professional employees within a unit which also includes nonprofessional employees, only if the professional employees, themselves, vote for this combination. Otherwise, they will be excluded from the unit, or determined as a separate unit by themselves.

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[5]Section 9(b) National Labor Relations Act, as amended.

The definition of professional employees in the National Labor Relations Act is:

> (12) The term "professional employee" means—
>
> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
>
> (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).[6]

For some institutions, at least, this definition includes not only faculty, but also a segment of the institution's nonacademic employees.

Faculty Units

The National Labor Relations Board as yet has decided few cases involving faculty. The few which have been decided likely are not controlling precedents for other institutions of higher learning. There is no way of predicting how the NLRB may handle faculty units when, and if, they come before it. It must be remembered, however, that the NLRB decides each case on the record of that case. This makes it important that all pertinent facts and positions get into the record, particularly where an area of employment is new to the NLRB. A unit which included both faculty and nonprofessionals, of course, could not be established, unless the faculty so voted. Answers to questions, such as the following, are completely open at this time. Is a unit of professionals exclusive of faculty appropriate? Is a mixed unit of faculty and other professionals appropriate? Where, within faculty, is the appropriate line between supervised and supervisor? Current organizational activity in some areas of professional employment is along occupational lines (for example, nurses). In other areas it is along interdisciplinary and interoccupational lines. The industrial organizations with which the NLRB is familiar may not provide answers to these questions. Questions should be fully developed, and all pertinent facts and argu-

[6]Section 2 (12) National Labor Relations Act, as amended.

ments should be included in any record before the National Labor Relations Board, where it is relevant to do so.

Supervisors and Managerial Exclusions

Supervisory employees are not employees within the meaning of the National Labor Relations Act and are, therefore, excluded from National Labor Relations Board established units.[7] In practice the NLRB also excludes other employees who are closely associated with management. The statutory exclusion of supervision, like the guard provision, dates back to the 1947 amendments and grew out of experience under the 1935 Act. Under that Act, supervisors could either be included in units of nonsupervisors or be in units by themselves. Rather aggressive foremen organizations developed during the war years in some of the mass production industries, and Congress decided, in 1947, to exclude supervisors from bargaining units. There is still a strong and continuing tradition of including foremen within the unit, by agreement, in some of the skilled crafts in the construction and printing industries.

There is no legal prohibition on agreeing to the inclusion of foremen in units, but, when they are included, there are limits on foremen's union activity which must be observed in the interest of employer neutrality. In the academic area, the supervisory and management hierarchy may not generally be well identified. This line between employer and employee is one which must be drawn with care and which may be a troublesome one for some time within some educational institutions. The employer-employee demarcation used in much of American industry is atypical in some public employment and may seem incongruous in some academic settings. Recognition of this may dampen the ardor of some academicians for collective bargaining and turn them in another direction. But if there is to be bargaining, there must be bargainers on both sides of the table; the line between them must be clear-cut and the prerogatives of each side recognized. In any event, it is important that each public institution endeavor to define the unit it recognizes in such a way that it does not end up bargaining with its own management agents. Every National Labor Relations Board record involving private institutions of higher learning should be fully developed to set forth any factors pertinent and peculiar to that academic institution. Only if this happens, can there be assurance that decisions are based on relevant facts as distinguished from industrial practice or on default.

[7]Section 2(3) National Labor Relations Act, as amended.

CHAPTER 9

DETERMINATION OF BARGAINING REPRESENTATIVES

Oscar S. Smith

Meaning of Exclusive Recognition

The initial action leading toward determination of a bargaining representative is a request for recognition as the representative of certain employees by a particular union, or possibly by an employee committee.

The request normally will be for exclusive recognition, which means that the bargaining representative represents all of the employees in the bargaining unit on a nondiscriminatory basis, without regard to union membership—that is, the representative bargains on behalf of both the union members and the employees who are not union members. Exclusive recognition also means that the employer, once recognition is granted, will not deal with anyone else regarding working conditions or grievances of any employees within the bargaining unit. Exclusive recognition does not foreclose an individual employee taking up his own grievance, but no adjustment can be made which is inconsistent with the conditions negotiated with an exclusive representative. Under the Recovery Act[1] there was some experimentation with proportional representation, particularly in the automobile industry, but, since the passage of the National Labor Relations Act in 1935, only exclusive representation has been contemplated within the coverage of that Act, or where the public policy of that Act is adhered to.

Under the 1962 Kennedy Executive Order 10998 which established the initial overall framework for collective negotiations in the federal

[1]National Industrial Recovery Act, 48 U. S. Statutes 195.

service, provision was made for three degrees of recognition, of which exclusive recognition was one. Federal practice and subsequent revisions of the federal labor management relations program,[2] however, have clearly moved to exclusive representation. There appears to be no sound ground for a policy other than exclusive representative recognition among colleges and universities, either private or public.

Members Only Recognition

While the Labor Management Relations Act does not specifically prohibit recognition for members only, there are some circumstances under which a members-only form of recognition might be regarded as favoritism or unlawful assistance. Requests for recognition for members only should be rejected, unless there is some state requirement to the contrary.

Method of Determining Majority[3]

In the event of a request for recognition as the exclusive representative, the first question to be raised is what kind of employees the organization seeking recognition claims to represent; that is, what is claimed to be the appropriate bargaining unit. The next question is what showing of interest can the petitioning organization make among the employees in that unit. Some labor organizations historically have tried to get employers to organize for them. Since 1935, as a result of the passage of the National Labor Relations Act, an employer subject to that Act may not organize his employees into a union or tell them what union to join. To do so would be an unfair labor practice.

Before granting a recognition request, the employer is entitled to, and should request, evidence that a majority of the employees in an appropriate bargaining unit have, in fact, designated a representative. The employer is entirely within his rights in asking that this evidence be received in a secret ballot election. A number of reasons favor the secret ballot. An election by secret ballot is the generally accepted method of electing political representatives. It is used in many other kinds of situations and will most nearly reflect the free choice of the voters at the time of the election. Most important, a properly conducted election cannot be challenged as reflecting other

[2]Executive Order 11491, October 29, 1969.
[3]See 29, CFR 102.60.

than the free will at the time of those voting. Because of this, an election will add a stability of result which may not exist in other forms of evidence of desired representation. Dues payment records, petitions, and recently signed individual authorization cards are sometimes offered as evidence. Of these, petitions are the least reliable. In small units, and under special circumstances, recently signed authorization cards or current union membership records are sometimes accepted as evidence of representation and are adequate for this purpose in such instances. The normal and preferable procedure, however, is through an election.

Majority of Votes Cast Rule

The standard practice in representation elections is to accept a majority of the votes cast as determinative—not a majority of those eligible to vote. As is well-established practice in political elections, those who refrain from voting are presumed to have assented to the will of the majority of those who do vote. In the event there are several competing organizations and no one of these obtains a majority vote, a runoff election is held between the top two choices.

Choices on Ballot

The idea of electing a collective bargaining representative through a secret ballot election likely developed out of political traditions and practices. The names of any competing unions are always placed on the ballot, not the names of individual union officers. The organization (for example, the union), becomes the representative and not the individuals who occupy the pertinent leadership positions within it. During the Recovery Act period, there was some experience with the placing of the names of individuals—nominated by signatures on a petition—on the ballot. The first government-conducted representation elections were held among the captive coal mines in Pennsylvania in 1933. A selected group of mediators from the staff of the National Labor Board[4] and from the Conciliation Service[5] conducted these elections as a part of a settlement of a captive mine strike. Any name was placed on the ballot at a particular mine which was supported

[4]A Tripartite Board, established by President Roosevelt in 1933 and chaired by Senator Robert F. Wagner of New York.

[5]The United States Conciliation Service of the U. S. Department of Labor. (See Chapter 11.)

by petitions signed by a given percent of the employees in that mine. This resulted in an unusual situation in a mine at Edenborn, Pennsylvania. Six persons were to be elected as representatives of the employees at that mine. When the ballots were counted, the six persons elected were three national officers of the United Mine Workers Union (John Lewis, Philip Murray, and Thomas Kennedy) and three local Negro miners, officers of a local organization which the United Mine Workers regarded as a company union. The unrealistic composition of the Edenborn Committee, some limited experience with proportional representation in the auto industry, and some unsuccessful experiences elsewhere contributed to a decision by the Congress to draft the 1935 National Labor Relations Act in contemplation of exclusive representation by a labor organization, rather than by an assembly of individuals. All ballots prepared by the National Labor Relations Board since 1935 have been so framed, and a similar practice now prevails in other collective bargaining elections.

Conduct of Election

Apart from the National Labor Relations Act, an election can be conducted jointly by the employer and the organization seeking recognition, or they can get a third party to do it. In the case of a private institution of higher education, it is preferable that any representation election be conducted by the National Labor Relations Board because of the authority given this Board under the Act and because of its extensive experience in conducting elections. The procedure is for the labor organization seeking recognition to first approach the employer and request recognition in order to raise a question of representation upon which the NLRB can act. When a labor organization approaches a private institution of higher education, alleges that it represents a unit of employees, and requests recognition, it is most appropriate for the institution to request that the organization establish its right to representative status through a National Labor Relations Board election.

The petition to the NLRB[6] may be filed by either the employer or the labor organization. Normally, the initiative in filing will be by the labor organization. The petition will be filed in the appropriate National Labor Relations Board regional office, and the regional director will assign an examiner to investigate the facts. If there is indeed

[6]See 29. CFR 102.80. Also see 29, CFR 101.17.

a question of representation, if the unit requested is an appropriate one, if the petitioner has made a substantial showing of representation (normally at least 30 percent as members or on signed authorization cards), and if there is no disagreement on other issues pertinent to an election, the National Labor Relations Board may propose a consent election without formal proceedings. Normally a union, other than the petitioner, will be permitted to compete on the ballot and otherwise intervene, or participate in, the proceeding only if it makes a showing of representation of 10 perc[illegible] of the employees in the unit. If there is agreement to a consent election, the entire matter can be resolved promptly and amicably. The election will be by secret ballot; if there is only one organization seeking recognition, employees will have an opportunity to vote for, or against, the petitioner. If there is more than one, employees will have an opportunity to vote between the competing unions, or for no union. The results will be counted by National Labor Relations Board agents in the presence of employer and union watchers.

Certification and Its Duration

A certification will be issued by the National Labor Relations Board announcing the results. Once an election has been held and a labor organization certified, the representational status of this organization normally cannot be challenged for at least one year, and possibly not for a longer period, depending upon the terms of any agreement and the collective bargaining arrangements entered into.

Consent or Ordered Election

The most likely kind of dispute which may make a consent election infeasible is one regarding the extent of the bargaining unit. Other questions may also arise. Illustrative of such questions are disputes over the payroll date to be used for determining eligibility, the eligibility status of persons not currently working because of layoff or strike, and supervisory or student status. Where there is disagreement on issues pertinent to an election, the National Labor Relations Board may hold a formal hearing, decide the issues in dispute upon the basis of the record made at this hearing, and direct an election. The format of the ballot, the general method of conduct of the election, and the opportunity for the parties to have watchers at the election and to challenge voters for cause are the same in the Board-directed election and in the consent election.

Public Institutions—Where to Seek Representation Assistance

In states which have state labor laws dealing with negotiations between public institutions of higher education and representatives of their employees, such laws may have procedures for determining representation questions. In some cases, these procedures are quite similar to the federal procedures applicable to private colleges and universities. Where state laws with such coverage do not exist and where there are substantive issues relevant to representation in dispute, the public institution may find itself with a problem for which there is no established method of resolution. In this event, and absent agreement, the employer and the petitioning organization may want to submit the dispute to a third party for establishing the procedures.

In such a situation, even if the institution and the labor organization seeking recognition are both willing to submit the unresolved issues to an impartial umpire, it may be difficult to find an umpire who is really qualified in representation matters. The National Labor Relations Board and the few state labor boards have largely preempted this field. However, there are literally thousands of reported National Labor Relations Board representation case decisions available for reference, and there are some arbitrators with representation experience. Also, the American Arbitration Association may be useful in such situations. Any agreement to submit any representation issue to arbitration wisely might provide that this resolution must be consistent with current National Labor Relations Board decisions and practices and also contain provisions delineating the authority of the umpire to resolve challenged ballots and like issues arising in the course of, or out of, any election held.

A question may be raised as to how to arrive at resolution of a representation dispute involving a public institution in a state with no applicable labor law, if one or both of the parties is unwilling to submit to a mutually agreed upon umpire. The answer to this question may be both obvious and effective. If the employer is recalcitrant, the petitioning labor organization can appeal through political channels which will normally be both receptive and supportive. If the petitioning organization is recalcitrant, the employer can continue to deny recognition, which may, in due course, become quite persuasive of reason on the petitioning organization.

CHAPTER 10

NEGOTIATIONS OF THE FIRST CONTRACT

A. Lee Belcher

Bargaining Committees

Before actual collective bargaining begins, the administration should select its negotiating committee, including the designation of its spokesman. It is highly desirable to keep the negotiating teams relatively small in order to expedite the collective bargaining process. Such committees may be as small as three persons on each side or may be as many as seven or eight; however, four or five seem to be the most practical maximum number.

The union's negotiating committee generally consists of its local union officers—the business representative or manager, the president, the secretary-treasurer, perhaps the chief steward, and, at times, a representative of the international union, unless it is an unaffiliated independent group. Occasionally, the union will be "supported" by a large group of observers, but this is not recommended by most union or management representatives.

The management team often consists of the Director of Employee Relations and/or the Personnel Officer, the Vice President for Finance or the Business Manager, and the directors of the functions involved, depending upon the size of the institution and the subjects to be discussed. At a large university, it would be quite impractical to bring into all the negotiating sessions each of the key directors of the various operations. In such a situation, the Director of Employee Relations and/or the Personnel Officer and a top staff member of the Office of the Vice President for Finance (or Business), together with one or two key associates, would be a logical composition for management's nego-

tiating committee. In any event, it is critically necessary for the management negotiating team to keep the absent line management members involved and currently informed whenever they will be affected by the outcome of the negotiations.

For those universities first experiencing collective bargaining and for those which cannot justify a full-time Employee Relations Director on the staff, it is strongly recommended that there be an employee relations consultant or labor relations lawyer sitting with the management team.

The university's spokesman should have extensive knowledge of the many unique characteristics and problems of university operations. He must have the confidence of the top administration and a great deal of time which he can devote to all phases of a possible lengthy collective bargaining process. He should be a mature individual with the emotional and personality traits required of the position.

An experienced negotiator, serving as the spokesman, will often be able to anticipate many of the union's proposals and arguments; he will be able to properly pace the committee's actions so as to be most effective; his experience will minimize the chances of making unwise commitments; and he will avoid many pitfalls in the give and take of bargaining, which can lead to serious problems. Even the most experienced practitioner will still make some mistakes, but these should be fewer and less serious than the errors made by the novice.

Inasmuch as the institution will be living with the terms of the agreement for years to come, a staff member should be the spokesman. There are consultants and labor relations lawyers who can serve as the spokesman for the university, and do so effectively, but generally it has been found best to use such persons as resource advisors.

Spokesman's Role

The union and the management will find it imperative to involve only the spokesmen in the actual discussions, except when some technical information is required from another committee member. In such instances, the "silent" members of the team will respond to questions or arguments only when asked to do so by their committee's spokesman. Failure to recognize the importance of this procedure will often give the union opportunities to weaken management's position on an issue and cause seemingly contradictory statements to be made.

Authority

As part of the preparation preceding negotiations, the general guidelines of authority of the management committee and procedures for prompt and effective communications and decisions during the actual negotiations should be established. The ultimate decisions, of course, rest with the governing board of the university, especially if it is a public institution, but the Board will normally delegate authority to the President, and he, in turn, to the negotiating committee. Failure to do so frustrates the collective bargaining process and is often a major contributing factor leading to strikes. Lack of authority will frequently prevent the management committee from effectively bargaining for the best possible agreement. Timing is of prime importance. A management committee which cannot say "yes" or "no" at the right time or that cannot make a reasonable compromise settlement acceptable to the governing board and the President's office will be less effective than is necessary.

It is in the best interest of the university for the management team to have considerable latitude in exercising its authority. This does not suggest that the bargaining committee should be given unlimited authority to commit the university, no more than the union's bargaining team can fully commit its membership. Usually the union committee has to submit the final agreement to the membership for ratification, which is no different from management submitting the proposed agreement to its governing board or to the top administration for acceptance. The authority to act within certain outside limits at various stages in collective bargaining means certain decisions become judgmental as to the proper timing. This is the period when the experienced spokesman or the consultant will be of considerable value.

Union's Demands

Prior to the first meeting with the union, the administration can expect the union to formally request a meeting for the purpose of beginning the negotiations. Sometimes the union will submit its proposals by letter in rather broad terms in advance of the first meeting, or it may submit a draft of a complete "agreement." In anticipation of the many union "demands" and the university's proposals, a great deal of research should go into the early preparation for discussion of these issues.

A negotiator who does not have substantially more facts, data, and arguments than he can possibly use will generally find that he is ill-prepared. With adequate preparation,[1] he will be ready to respond in a sound, logical manner to the union's arguments and offer rational counterproposals.

If the union has not submitted a proposed "agreement" in advance, the union committee will often come to the first meeting with such a document and may even go through the motions of asking the management committee to accept it as is, arguing that it is a "standard contract." This is a rather common tactic and is not to be taken seriously. Such "model" agreements are utopian from the union's standpoint and rarely exist in actual practice. It may be that the union has a few isolated cases where certain contract clauses have been agreed upon, but the model contract is usually a composite of all of the most favorable provisions which the union has been able to negotiate elsewhere. It may even include model clauses which exist only in the imagination of the union's research department.

It is highly desirable to negotiate as much as possible from management's proposals and language instead of the union's. It sometimes takes a great deal of patience and finesse to redirect the negotiations to the language proposed by management. This is first assuming, of course, that the subjects are proper for collective bargaining and are ones on which management is willing to reach an agreement.

Another advantage to an institution for developing its own "model" language covering specific subjects is that the university may find it useful to incorporate such wording into agreements covering other groups of employees in future negotiations. If it has well-established personnel policy statements, many of these may not need to be repeated in the agreement (which would make it quite lengthy), but instead may be made a part of the agreement by reference.

If some of the benefits are established by legislative action and incorporated in the agreement by reference, it is important to include a statement to the effect that any changes in such benefits by future legislative action will amend the agreement and will become effective in accordance with the provisions of the law.

There is a distinct hazard in accepting contract language borrowed from an agreement which is not one's own. There is no way of knowing how it has been interpreted by the other parties. Prematurely agreeing to the proposed language without a full discussion of the intent often

[1]For a discussion of research source materials, see Chapter 13.

leads to misunderstandings. Because of his past experience, the union spokesman may put quite a different interpretation on one of his clauses than does the university. This can be a major cause of future charges of bad faith and distrust.

For the university, the most satisfactory approach to collective bargaining is for every employee to have (well in advance of any union organizing activity) a copy of all personnel policies in writing so that with a minimum change in format, these can be adopted for inclusion in an agreement or made a part of the contract by reference. These policies, as drafted, would be the university's original proposal in the negotiations. Any revisions or concessions would then be reflected by appropriate word changes.

The fact that the institution is entering into negotiations does not mean that any change or concession is automatically granted. Obviously, the employees and the union will expect improvements in wages, various fringe benefits, etc., for this has been the basis on which the union has been able to interest the employees into becoming members. The economics, the budget year, or the general philosophy of equal treatment for all employees may dictate that very few, or no, changes can be made in present policies or benefits. Incorporating them into a union agreement may be the "best offer" the administration can make.

Management Proposals

The college should not expect to offer counterproposals in the first negotiating session. It would be unwise to do so, inasmuch as one will have had no opportunity to learn from the union the nature of its requests in detail. The negotiations should begin by giving the union almost unlimited time to explain fully its proposals and the reasons why the union thinks the university should agree to them. This is a valuable period for the management committee to listen—carefully—in order to identify, if possible, the issues which are most critical and the reasons the existing policies are believed by the employees to be inadequate.

Wage Negotiations

In preparation for the negotiations of wages, one should try to anticipate the arguments and "facts" on which the union will make its plea. With the current rapid rise in the cost of living, it is safe to

assume that this will be one of the key arguments. For this reason, the administration's negotiating committee will need, along with other data, factual information regarding the increase in the cost of living during the year as reflected in the *Consumers' Price Index*, published by the Bureau of Labor Statistics, U. S. Department of Labor. (See Chapter 13 for suggestions on resource materials.)

It will be important to know the competitive wage rates being paid in the labor market area by other universities and industrial employers, especially those which are unionized. It is usually helpful to use data from reputable wage surveys by associations and by the Bureau of Labor Statistics for one's labor market. If the university is a public institution, there will be value in having the wage data from other state agencies. One needs to know factually the competitive wage rates for similar jobs and the amount of the wage increases which have been granted by the various employers in one's labor market during the past several months.

In addition to a substantial wage increase, the unions will often request additional wage adjustments for selected classifications believed to be out of line. Or, the union may propose a substantially different wage system. For example, if there is a wide rate range for individual job titles and the individual wage increases have been based entirely on merit, one can expect most unions will press vigorously for a discontinuance of the merit concept in favor of longevity increments. This can become a strike issue.

If the wage plan is one which provides a number of steps between the minimum and the maximum of the rate range, the union may request a shorter period of time for moving to the top of the range. The union also may seek to eliminate part, or all, of the steps, establishing the top rate as the regular rate for the future or, in other cases, increase the number of incremental steps.

Unions and union representatives have individual "personality" traits and differing goals. Those unions which have characteristically negotiated with manufacturing industries or with construction contractors may well seek a single wage rate for each job classification. (When a single wage rate is used, a lower rate normally is paid during the probationary period, after which all employees in a particular classification are paid the same wage.) Unions which are accustomed to bargaining with state or federal agencies under civil service policies, or with public bodies which historically have had incremental steps within rate ranges, may have no hesitancy about continuing and expanding this form of wage plan.

Fringe Benefits

Much of what has been suggested regarding the need for wage survey data for the labor market also applies to such fringe benefits as vacation plans, holiday pay, and sick leave.

One aspect, often neglected, is that of determining, in advance, the actual costs of each fringe benefit. Not only does the management team need to know what each of these various fringe benefits costs, but, equally important, will be the cost of possible improvements. For example, the cost for an additional holiday, or for a more liberal sick leave plan, or for a more generous vacation program should be known. Sooner or later in the negotiations this information will be valuable.

This is not to imply that management should anticipate having a variety of holiday or vacation plans simply because the university may be negotiating with several unions. The contrary is true. If one's benefit plans are sound and well thought out, and if they are currently maintained at a competitive level, the university should strive to extend such benefits uniformly to all unionized groups.

Other Basic Issues

Earlier in the section on **objectives,**[2] it was noted that the union can be expected to make hard demands for (1) some form of union security (such as agency shop, union shop); (2) checkoff of union dues; (3) grievance and arbitration procedures;[3] and (4) the application of seniority for promotions, transfers, layoffs, or other purposes. The negotiating committee should be prepared to give an answer to these key union demands. An agreement without a grievance procedure is hardly an agreement at all. There are justifications for applying the seniority concept under certain conditions, although it is not recommended that seniority be the only consideration for promotions, transfers, layoffs, or other purposes. Research of the pros and cons of the various alternative applications of these principles and to the anticipated union arguments will prove useful.

Management's Rights

The university will want to include in its proposals, and ultimately in the final agreement, a Management's Rights clause. The principle

[2]Chapter 3.
[3]For a detailed discussion of grievance procedures, see Chapter 12.

purpose of such a clause is to clearly state that the university has retained the unilateral right to make certain policy decisions. These matters (for example, the mission of the institution, the construction of new buildings, subcontracting, the scheduling of classes, and the hiring of new employees) should not be subject to the grievance procedure or to bilateral determination with the union. Without intending to suggest the adoption of any specific clause, the following example of a Management's Rights provision might be helpful. The provision is from the Presidential Executive Order 11491, which authorized agencies of the Federal Government to negotiate with unions representing government employees.

> Sec. 12. **Basic provisions of agreements.** Each agreement between an agency and a labor organization is subject to the following requirements–
>
> (a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;
>
> (b) management officials of the agency retain the right, in accordance with applicable laws and regulations–
>
> (1) to direct employees of the agency;
>
> (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
>
> (3) to relieve employees from duties because of lack of work or for other legitimate reasons;
>
> (4) to maintain the efficiency of the Government operations entrusted to them;
>
> (5) to determine the methods, means, and personnel by which such operations are to be conducted; and
>
> (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and
>
> (c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
>
> The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Avoiding Mistakes

The most effective negotiators keep to a minimum the ambiguities, omissions, or other mistakes which lead to future misunderstandings and charges of bad faith. To achieve these goals, the proposed commitments should be "tested" against past situations, and also the application of the language should be projected to operations well into the future, covering all seasonal variations of the academic calendar. Most management representatives and union leaders do not find it difficult to draft "language" which is satisfactory for normal, routine operations. The critical need is for imagination to visualize the exceptions or the unexpected situations. What is agreed upon may be entirely satisfactory in July but may be found very troublesome in December. Or, to take another example, a concession which may present no problems for those departments working five days a week—all on the day shift, 52 weeks a year—may present serious problems for a department which operates on a ten-month basis, with many of its employees working on the second or third shift, or for the seven-day, around-the-clock operation of a Power Plant. What may be satisfactory for the Student Union operations may be very costly for the Printing Department, or the Medical School, or a College of Agriculture, with its extensive farming operations.

The unique and complex nature of major institutions makes it highly important that contract language under consideration be "tested" by applying the proposed terms to as many variations in campus operations as possible. The directors of these various operating units should be involved throughout the negotiations in order to have the benefit of their input and general acceptance of the final language. This "testing" usually cannot be done during the actual negotiations but is carried on during the recesses between the negotiating sessions.

What has been said about anticipating the exceptions for service and maintenance personnel has general application to negotiations with the professional staff, office and clerical personnel, or any other employee groups.

Study of Arbitration Cases

An important research resource, which the experienced labor relations executive often finds useful, is the study of arbitration decisions dealing with a particular topic. For example, a study of arbitrators'

awards[4] on sick leave may very well suggest contract terms which one would want to include in the agreement in order to minimize abuses, excessive grievances, or misunderstandings. This type of research will be beneficial in studying the issues which may be contemplated for inclusion in the negotiations with the union.

Special Advice Needed—Pension and Health Insurance Plans

There are some issues in collective bargaining which require specialized, expert advice and guidance. One of these is the pension plan. Another is medical insurance. Because there is substantial money involved in the establishment of a retirement benefits program and in the various improvements which may be considered, the accurate costing of these plans, or improvements, should not be by guesswork. It would be foolhardy to use only a rough estimate of such long-term expense.

An institution's pension actuary, or health insurance consultant, should be consulted before any serious negotiation on these subjects is undertaken. He probably will not be the spokesman for the university, but he will be able to furnish the management committee with factual data and logical arguments to support its position. (It is recognized that some of the institutions are under pension plans established by state legislatures and that the universities have no authority to amend their plans. The same would apply to civil service personnel policies and, in some cases, to wages set by legislatures or civil service commissions.)

Time of Negotiations

The union will be eager to enter into negotiations shortly after having been certified as a bargaining agent. There are no legal requirements that the actual collective bargaining begin immediately, but psychologically it is well not to delay the negotiations. It is recommended that preliminary meetings be held within ten days or two weeks after the original union request[5] for a meeting is received.

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[4]For information on publications of awards, see Chapter 13.

[5]This would be only after the union has demonstrated that a majority of the employees in the bargaining unit have indicated that they wish to be represented by the union. Unions will sometimes request a meeting to begin negotiations in their first communications with the university and before there has been any election to demonstrate the extent of the membership.

Following the first session with the union, management will need time for study of the union's proposals. It would not be unrealistic to recess for a week or more before resuming the negotiations.

Some unions are eager to enter into bargaining on a more or less continuous, uninterrupted basis, with the thought of negotiating for several days, if necessary, in an effort to reach an agreement. At times, bargaining sessions will go late into the evening and under critical deadlines, even all night. The expectations[6] of the union will vary by the personalities involved and by the sequence of developments. It is this author's belief, however, that recesses of a few days between sessions are often desirable in order to study demands and draft counterproposals. These recesses are also needed for reviewing the status of developments with the top administration and possibly the Board of the institution.

As a general rule, it is well to set a date for each succeeding meeting at the time of recessing the current session. This has the advantage of allowing the union to reassure its members that there is good-faith bargaining and to avoid giving anyone the impression that the university is trying to unduly delay the negotiations.

Place of Negotiations

The place for the negotiations can have some importance. The meeting place may depend on the facilities available on the campus and the desires of the administration and the union. Occasionally, union officers will be quite insistent that negotiations be held off the campus, usually in a conference room at a motel or hotel, but this hardly seems necessary in view of the facilities available on most campuses.

A rather important aspect of the meeting place is that it provides maximum privacy.[7] It is difficult to carry on the negotiations in a conference room which has a glass panel in the door where pedestrian traffic may distract the negotiators. Nor is it recommended that the negotiations be interrupted for telephone calls, except those of an emergency nature. If the negotiations are held on campus, care

[6]It is not to be implied that management must go along with every expectation or request of the union regarding frequency of negotiating sessions, time, or place of the meetings. Such matters are subject to negotiations in much the same way as are the terms of the contract.

[7]A few states require by law that all such hearings be held in public. Generally, this practice is highly undesirable.

should be taken to assure that the meetings can be continued without secretaries or associates interrupting the discussions. A separate room will be needed for the caucuses.

If the meetings are held off campus, in a motel for example, the costs of such facilities are often divided between the union and the institution, although some unions will assume this expense.

It is common practice for the two bargaining teams to sit on opposite sides of the table, with the spokesman for each committee sitting near the center of his group. The table should be wide enough so that the notes being taken during the discussions cannot be read by the other side. Although this is an adversary relationship, it is desirable to keep the negotiations at a low key and friendly whenever possible. Coffee breaks in the morning and afternoon are expected.

No Minutes

There should be no recording of the actual negotiations, except in informal notes made by each committee. It is recommended that no secretary or court reporter record the discussions. This has been subject to experimentation and has been found wanting. When a complete verbatim transcript is to be prepared, one will find that the parties tend to become too theatrical and talk "for the record," rather than entering into negotiations.

By the same token, the informal notes which each side should keep can be exceedingly important in the processing of future grievances and later negotiations. These informal notes should not be signed or even initialed by both parties in the form of minutes of the meetings.

Once a clause has been agreed upon, however, it is well for both sides to have copies of the accepted language. These copies may be initialed by the spokesmen for both the union and the university, unless, of course, it is contrary to the state law for the institution to enter into formal, signed agreements with a union.

Caucus

The use of the caucus is a standard procedure by both union and management and should be utilized as frequently as necessary. A caucus is only a brief recess for the purpose of discussing a particular subject in the privacy of the committee. A caucus is often called before responding to the union's arguments or proposals in order that the spokesman may be educated with regard to certain technical

aspects with which he is not familiar. It is also useful in collecting thoughts, reviewing notes, and generally preparing to respond to the arguments and facts submitted by the other side.

There should be no hesitation to ask for additional time before responding to a particular request, if such time is necessary for research or for review of the recent developments with the administration. Asking for more time should not be abused, for to do so may contribute to more serious problems. However, if used discreetly, it is generally an accepted practice.

Tactics

In all negotiations, there are certain requests made which the union has no real hope of gaining. Other issues, however, are of such importance to the union members as to be considered strike issues. Here, again, experience is valuable in being able to identify those which are "window dressing" and those which are of a critical nature.

A negotiator for the university will rarely find it wise to ask a union spokesman to state unequivocally that certain issues have been dropped. In the *quid pro quo* a union spokesman may well volunteer that the committee will be willing to drop specific demands, providing management will make certain other concessions. This is different, however, from the tactics which the spokesman should use to clear out the items which he hopes will be dropped by the union. A preferred method is to omit mentioning those specific issues when he has reached the point of trying to conclude negotiations. The university spokesman may say: "If it will wrap up the negotiations and give us an agreement, the university is willing to do (this and that)." In other words, they are dropped by being left out of the final offer.

Employee Time Off

The employees serving on the union's negotiating committee may ask for time off with pay to attend such meetings. This policy of paying for such time is not generally recommended, although many institutions do pay for negotiating time. The principle objection is that it tends to lengthen the bargaining process, as there is no economic motivation to reach an agreement within a reasonable period. Failure to agree to pay the employees who are on the union's committee may result in the union requesting that the negotiations be held after working hours, usually in the evening. This is acceptable to some

employers, but it is objectionable to other people because of tying up the management committee for many hours at night. Another objection is that often tempers get short, and the bargaining becomes somewhat more heated when fatigue sets in. Under no circumstances is it recommended that payment for time spent in negotiations be in excess of the employee's normal work day, even though the negotiating sessions may extend into his "overtime" hours or be outside his shift.

Publicity

To the extent possible, both the union and the university should avoid making controversial statements to the press, radio, or TV during the actual negotiations. Such statements tend to be confusing to the employees, as well as to the supervisors. Frequently the facts reported are sketchy or garbled. If the collective bargaining reaches the critical point of a strike threat, or an actual strike, the university can expect the union to be very vocal in its efforts to create a public controversy, hoping to get the administration into a public debate. Rarely does the employer benefit from responding to every union argument or accusation. Extreme care needs to be taken to avoid this pitfall. The experienced union representative will be most eager to get the university spokesman into a public hassle, usually described as "negotiating in the press." It is almost impossible for the administration to win in this kind of "contest." Factual statements regarding meeting dates and the sincere desire of the university to reach a reasonable agreement are about all which can be said without the risk of being misunderstood or leaving the wrong impression by being quoted out of context.

CHAPTER 11

IMPASSE PROCEDURES

Conciliation, Fact-finding, Strike Settlements

Oscar S. Smith

The Statutory Framework

Over the nation, the established requirements and the available procedures in higher education for the resolution of an impasse during negotiations are something of a crazy quilt. Private institutions of higher education, except possibly the very smallest ones, are subject to the provisions of the Labor Management Relations Act (LMRA) of 1947,[1] as amended, particularly to Title I[2] section 8(d) and Title II. Title II is that section of the Act which establishes the dispute settlement assistance machinery for industries covered by the LMRA. In a few states, there are state labor laws applicable to those small private institutions over which the NLRB declines jurisdiction. Some of these laws, or companion statutes, provide for state mediation assistance. Public institutions of higher education in many states are not subject to any dispute settlement assistance statute, although there are some state mediation laws which do cover such public institutions, even where there is not a collective bargaining law. While the provisions of these laws vary greatly from one state to another, many states do have a State Mediation or Conciliation Service. Conciliators from this service may be available to mediate college and university labor disputes.

The discussion which follows will be directly relevant to private higher educational institutions subject to the Labor Management Re-

[1]61 U.S. Statutes 137.

[2]Title I of the Labor Management Relations Act is the National Labor Relations Act of 1935, as amended.

lations Act. However, be mindful that other institutions may have similar mediation services available from a state agency. The possibility also exists that, on occasion, the Federal Mediation and Conciliation Service may be willing, as a matter of public service, to extend conciliation aid to public institutions.

Dispute Notice

Section 8(d) 3 of the LMRA requires that an employer covered by that Act, who is in the process of renegotiating a collective bargaining agreement, must give timely notice of this fact to both the Federal Mediation and Conciliation Service and to any appropriate state conciliation service (for example, normally within 30 days after the renegotiations start). An employer who does not give such notice is not fulfilling the legal requirement of bargaining in good faith.

Definition of Conciliation

Title II of the Labor Management Relations Act provides the statutory foundation for the Federal Mediation and Conciliation Service and for public policy in the resolution of labor disputes. For purposes of this discussion, mediation and conciliation will be treated as synonymous words, although, in common usage, mediation may be a slightly stronger word than conciliation.

Conciliation is the process of attempting to bring people together. No compulsion is involved. The purpose of conciliation is to get the parties to a dispute to agree on a resolution of the issues in dispute. A conciliator listens, questions, and suggests to the end of finding means to agreement. He does not decide or direct.

The Federal Mediation and Conciliation Service

What is the Federal Mediation and Conciliation Service? What kind of a service does it offer, and is it an organization with a useful role in the resolution of labor disputes which arise in colleges and universities?

Background of Federal Mediation and Conciliation Service

The Federal Mediation and Conciliation Service (FMCS) was created by Congress in the passage of the Labor Management Relations Act in 1947. Its predecessor was the United States Conciliation

Service, an organization which existed within the United States Department of Labor. The origin of the United States Conciliation Service was the appointment by the Secretary of Labor in 1913 of a commissioner to mediate labor disputes. From this start, the Conciliation Service developed within the Labor Department to an organization which included a Director in Washington and a small staff of conciliators located in the principal cities of the United States. During the labor unrest of the Industrial Recovery Period of the 1930's and of World War II in the 1940's, the Service was supplemented by various special Boards, but it continued to play an ever-increasing role in the resolution of disputes. Consistent with this increased significance of its work, a strong effort was made by the Labor Department to upgrade the competence of personnel and to improve the quality of the Service's work.

In due course, questions arose as to whether the Labor Department was the right home for the Conciliation Service. As a conciliator works between management and labor, he becomes ineffective if he appears to lack objectivity or to be closer to one than the other. Many persons argued that the effectiveness of the Service would be increased if it were an independent agency separate from the Labor Department. Congress made such a separation in 1947.

Organization of Federal Mediation and Conciliation Service

Since 1947, the Service has existed as an independent agency responsible directly to the President. It currently has regional offices in seven major cities and has resident conciliators in a number of other cities. The total number of conciliators employed is just under 300, and there are some 150 additional employees who provide clerical and other support to these conciliators. The staff of the Service is quite stable; normally not more than about ten new conciliators are appointed each year. Care in selection, in-service training, and low turnover have resulted in a staff of experienced men who are working quite hard and carrying out their conciliation activities in an objective and effective manner.

Work of Federal Mediation and Conciliation Service

The Service will extend conciliation assistance in the resolution of actual disputes and, if invited to do so by the parties, will provide consultation services to the end of discovering and removing the

causes of potential disputes. The Service does not perform arbitration with its own staff. It does maintain a roster of professional arbitrators. Upon request of the parties to a dispute, it will provide a list of such arbitrators from which the parties, themselves, may make a selection. Also, in the event that the parties cannot agree on an arbitrator, the Service, if asked to do so, will appoint an arbitrator from its roster. There is no charge for this service. Expenses and fees of arbitrators are paid by the parties and not by the Service.

In a typical year, the Service monitors some 20,000 dispute cases. In about 7,500 of these, it participates to the extent of arranging joint meetings of the disputants. In the other 12,500 cases, it only monitors progress from a distance, so to speak, by occasional contacts with the parties, to assure that negotiations are proceeding in a hopeful manner. Of the 7,500 cases annually in which the Service schedules joint meetings, over 7,000 involve the negotiation of labor contracts. The balance involve particularly difficult kinds of grievances.

Jurisdiction of Federal Mediation and Conciliation Service

The jurisdiction of the Federal Mediation and Conciliation Service is essentially the same as that of the National Labor Relations Board. However, the jurisdictional standards (for example, the dollar amounts below which the NLRB will not assert jurisdiction) are in no respect binding on the FMCS. Also, in the immediate past, FMCS has provided assistance (1) in the resolution of a number of disputes involving federal agencies and (2) during fiscal 1969 in seven disputes involving public employees at the state and local government levels.

Legal jurisdiction is not of paramount significance. The Federal Mediation and Conciliation Service issues no orders or directives. Its effectiveness is dependent upon the willingness of the parties to cooperate with it and to give objective analytical consideration to suggestions of its conciliators. In reality it has effective jurisdiction only where the parties accept it. However, it does have both a statutory jurisdiction and a statutory mandate to offer its services in the public interest in certain situations, even if no party has specifically asked it to do so.

Obligations of the Federal Mediation and Conciliation Service

Title II, in its policy statement, enunciates the philosophy that issues arising in collective bargaining may be advanced to resolution "by

making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration and to encourage employers and the representatives of the employees to reach and maintain agreements" . . . "and to encourage reasonable efforts to settle their differences by mutual agreement through conferences."

The Service is directed to make its conciliation and mediation services available in the settlement of grievance disputes only as a last resort and in exceptional cases and to avoid disputes with only a minor commerce impact if state agencies are available. In other disputes, the Service has a duty to put itself in communication with the parties and to use its best conciliation efforts to bring about an agreement. If the Service cannot bring about an agreement, it is directed to "seek or induce the parties voluntarily" to find other means of settling the dispute.

Obligations of the Negotiating Parties

Title II also imposes certain obligations upon the parties in each dispute. These obligations are (1) to exert every reasonable effort to make and maintain agreements concerning wages and working conditions; (2) when a dispute arises, to endeavor through conference to settle the matter expeditiously; and (3) if the dispute is not settled by conference directly between the parties, to participate fully in such meetings as may be undertaken by the Federal Mediation and Conciliation Service.

Title II also contains provisions for dealing with impasses which lead to national emergencies and for establishing special fact-finding panels in national emergency disputes. It seems that an educational institution might become involved in a labor dispute which constituted a national emergency in only an extremely rare situation. For this reason, the national emergency provisions will not be discussed here.

Mediation and Fact-finding Procedures

The difference between the number of disputes monitored by the Service (20,000) and the number in which joint meetings are held (7,500) reflects the importance of timing in any active mediation effort. If the conciliator actively enters the negotiations at too early a stage, that is, before the parties have made genuine efforts to exhaust their own ability to settle, his suggestions may be "old hat" and his effectiveness lessened at the critical later stages of the negotiations.

An expert conciliator and parties with a strong will to settle will normally delay the use of active conciliation until lesser issues have been cleared away and the resourcefulness of the parties, themselves, has largely been exhausted in their search for mutual agreement.

The precise steps which will be followed by a conciliator, once he actively enters a dispute, may vary with the nature of the issues, the personalities of the negotiators, and the *modus operandi* of the conciliator. Normally, these will include some combination of private discussions with each disputant and of joint conferences. Essential to any successful mediation effort is the establishing and maintaining of confidence and rapport between the conciliator and the negotiator for each of the parties. Accomplishment of rapport and confidence entails reciprocal and mutual obligations on the part of the conciliator and of each of the parties, a fact which is well recognized by most conciliators and a part of their basic training.

If, in the course of mediation, further direct negotiations appear hopeless, a conciliator may propose various procedural methods for resolving the dispute. These may include such devices as fact-finding by an agreed upon third party neutral, with or without recommendations or binding arbitration[3] by an impartial third party.

Recently, the term Advisory Arbitrator has been used a great deal, particularly in connection with federal employer-employee negotiations. In concept, Advisory Arbitration is a somewhat stronger term than fact-finding, but, in practice, the terms are somewhat synonymous. Fact-finding initially came into use as a devise to be used in persuading settlement of disputes between private parties which had a significant impact on the economy or on health and safety of the general public. Advisory Arbitration came into use as a means of preserving the sovereignty concept in respect to the extent to which public officials may delegate their public responsibilities. Advisory Arbitration normally is used only where a public employer is involved and always contemplates that there will be recommendations as to the terms of settlement. Fact-finding is used both in public and in private disputes and, in some cases, may be limited to a report on the negotiations and an analysis and statement of the issues in dispute, but without specific recommendations as to their resolution.

If fact-finding is carried on pursuant to a statute, the method followed will be that outlined in the statute. In other situations, however, the purpose and methodology of the fact-finding will be as

[3]See Chapter 12 for a detailed discussion of binding arbitration of grievances.

defined by the parties. The general concept of fact-finding is that a neutral is called in to identify the issues and the respective contentions in respect to them. The findings of the neutral may be given only to the parties or may be released publicly. Whether the fact-finder's report contains a recommended resolution of the dispute is dependent upon the charter given to the fact-finder. The persuasiveness of the fact-finding and the effectiveness of the procedure in bringing about agreement depend upon a number of factors, including the status of the fact-finder, the reaction of the audience to whom the report is released, and the extent of pressure of that audience reaction upon the negotiators.

When Conciliation and/or Fact-finding Fail

If none of the measures suggested by the conciliator or the fact-finder are accepted, or, if accepted, they fail to accomplish settlement, the dispute may move toward a work stoppage (which in private institutions is a protected[4] activity, but in public institutions may be illegal). At this point, each party to the dispute in the private institution is compelled to estimate and to weigh its cost of a work stoppage against its cost of a settlement available at that particular time. If a strike occurs, the process of reviewing and weighing costs continues until one party concludes that the terms then available are preferable to the cost of continuation of the strike.

The strike, as the course of last resort, is the ingredient in the bargaining process which provides the strongest persuader to reasonableness. One analyst has suggested "call upon third party neutrals to *assist in the bargaining* if you're ignorant of the processes or the issues are unusually complex" . . . "fact-find if you don't believe one another" . . . "arbitrate if you're lazy" . . . "bargain as far as you can go" . . . "strike (or take a strike), if you must," to which might well be added—but weigh carefully—the current and long-range total cost (for example, economic, social, political) of each alternative.

In a public institution, the employer must also, as a part of weighing the cost of a strike against the cost of the then available settlement, take into account the extent of any obligation he may have as a public employer to seek enforcement—through injunction, disciplinary action, or otherwise—of any public prohibition on strikes. In weighing the cost of a strike against an available settlement, the employees and

[4]Section 7. National Labor Relations Act, as amended.

their representatives must evaluate the impact of any statutory prohibitions or penalties upon their ability to successfully pursue a strike.

This Chapter has been written for situations where disputes are resolved without a strike (which will most frequently be the case). It should be noted, however, that if either party elects to force a strike as the ultimate persuader to an optimum settlement, considerable advance planning and many policy decisions must be made. Can and will educational activities and services be maintained? If so, how? If not, how? What legal steps are available to employer, employee, students and the public, and how will they be used? How will nonstrikers be treated—particularly if educational activities and services are not maintained? What community and employee information problems will arise, and how will they be dealt with? These are not questions to be dealt with in this Chapter, but they become very important questions to be resolved, both in planning and in evaluating the available courses of action to be considered in respect to a particular settlement.

CHAPTER 12

GRIEVANCE AND ARBITRATION

Hugh P. Avery

Regardless of how well drawn a labor contract may be, and regardless of the time, intelligence, and detail applied to its drafting, no collective bargaining agreement can make clear and concise provisions for every problem which will arise during its lifetime. A properly drawn agreement is, in reality, a rugged frame or skeleton of the union-institution relationship, which will provide strong guidance in the day-to-day activities of the parties and their representatives for many years to come. However, it remains for this day-to-day existence under the agreement to complete the framework. One of the major means of accomplishing this is the grievance procedure.

Grievance Defined

A grievance, in a very broad sense, with or without a union agreement, is an alleged injustice which an employee (or a group of employees) thinks exists in the employment relationship. Under a union contract, the definition is generally narrowed to mean an alleged violation of the provisions of the contract.

Grievance Procedure

The method of handling these alleged wrongs under a formal collective bargaining agreement is referred to as the grievance procedure. It provides a means of initiating (or filing) the complaint and carrying it through a number of steps or levels of decision to an ultimate conclusion. The last step in union contracts is generally final and

binding arbitration. However, the purpose of the various steps is to reach a mutually satisfactory decision before the last step.

The number of steps in a grievance procedure may, of course, be changed to either more or fewer levels or steps, depending upon the organizational structure of the institution. Rarely are there less than three nor more than six steps, including the final step of arbitration. The following discussion outlines a typical grievance procedure.

First, there is a verbal discussion between the employee (and/or his representative) and his immediate supervisor. If not resolved, the grievance is reduced to writing, generally on a printed form, and formally presented to the supervisor. If the supervisor does not issue a response satisfactory to the employee, the grievance is advanced to the supervisor's department head and, if not resolved at that level, to the administrative superior (and/or Personnel Function). The final step is arbitration. As the grievance is processed to higher levels, it is handled by higher union officials (for example, steward, head steward) and, finally, by outside union representation.

Increasing time limits should be imposed for each step of the procedure. The imposition of such limitation on the first step is of considerable importance. If nonexistent, the administration may find itself defending an action taken months, or even years, preceding the filing of a formal grievance. The time limits may be waived for a valid reason, such as the absence of an individual essential to a decision at a particular level.

There is no hard and fast rule in grievance handling, for even the basic philosophy will vary considerably. Many institutions want the grievance committed to writing as soon as possible, believing that such a procedure limits the grievance. Others believe it is better to delay a written commitment as long as possible, thus avoiding the status of a formal grievance until absolutely necessary and leaving the door open for a settlement to be reached before the grievance becomes a formal written document.

The chart on page 83, summarizing the progression of a grievance, should be considered only as a guide for the number of steps, for the personnel involved, and for time limitations, all of which are subject to the requirements of a specific institution.

The inclusion of time limitations in each step of the grievance procedure has many advantages. However, the administration's representative(s) must be well aware of the limitations so as to not lose a settlement by default. If additional time is required, a timely request for extension should be made.

Grievance Progression

Step	*Basis of Discussion*	*Representation*		*Approx. time Limit*[1]
		Institution	*Union*	
1	Verbal	Immediate Supervisor	Employee and/or Department Steward	2-5 days
2	Verbal or Written Grievance Statement	Department Head	Employee, Chief or Head Steward	3-7 days
3	Written Statement and Response to Step 2	Department Head, Administrative Superior, and/or Personnel Function	Employee, Grievance (shop) Committee, International Representative	1-2 wks.
4	Written Statement and Responses from Previous Steps	Top Administrative Official(s)	Employee, Grievance Committee and/or International Representative	1-4 wks.
5	Original Grievance Statement and Responses	Personnel Director and/or Counsel, Institutional Witnesses	International Representative and/or Counsel, Employee, Witnesses	

[1]Time limits should be specific. The limits in the chart should be expressed as "end of third work day following the date on which the alleged action which created the grievance occurred," or "Department Head shall render his decision by the end of the fifth work day following receipt of grievance."

Grievance Article

The following is an actual grievance article taken from the agreement with a large international union. It incorporates many of the features described above. It is by no means the ideal or perfect clause, but is provided merely as a sample.

Grievance Procedure

Section 1. *Definition.* A grievance is defined as any alleged violation of this Agreement arising as the result of a difference of opinion as to the interpretation or application of the Agreement. Both parties agree to make a prompt and earnest effort to settle any grievance in accordance with the general rules and procedures given below.

Section 2. *Application.* Grievance shall be deemed to consist only of disputes arising out of the interpretation or application or alleged violations of this Agreement.

Section 3. *Time Waiver.* Any grievance which is not presented for consideration within the specified time limit of each step set forth in this **Article**, shall be deemed to be waived and the grievance settled to the satisfaction of the employee, Union or Institute, and therefore shall not be entitled to any further consideration. The term, "work days," used herein shall not include Saturdays, Sundays, and Holidays.

Section 4. *Maintenance of Status Quo.* There shall be no suspension of work as the result of a grievance or during the period a grievance is being processed. The status quo will be maintained during the period the grievance is in process, except that if the grievance concerns the discharge or suspension of an employee(s), such employee shall remain off campus until he is reinstated through the grievance procedure or unless he requests to attend a meeting related to the grievance.

Section 5. *Unreasonable Time.* Any unreasonable time spent in the processing of grievances will be called to the attention of the Union and may be at the expense of the employee(s) involved or the Union.

Section 6. *The Grievance Procedure shall be as follows:*

Step 1. The respective Department Steward and/or the employee shall discuss the grievance with the employee's immediate supervisor no later than the end of the next working day following the date on which the action which created the grievance occurred. The Supervisor shall render his decision to the Department Steward and/or the employee no later than the end of the next following work day.

Step 2. If no satisfactory settlement is reached in the first step, the grievance shall be reduced to writing in quadruplicate on a form furnished by the Institute. The written statement shall be signed by the aggrieved and/or his Department Steward. The distribution of the copies shall be as follows: original to the respective Department Head; duplicate retained by the Steward; triplicate to the Director of Personnel Relations and quadruplicate to the office of the Union Local.

The submission to the Department Head shall take place before the end of the second work day following the decision under Step 1, and shall serve as notification to him of the existence of the grievance, and he shall render his decision in writing within two work days following receipt of this notification. The Department Head may, at his option, call a meeting of those concerned to discuss the grievance.

Step 3. If the decision of the Department Head does not settle the grievance, written advice by the Union shall be provided to the Director of Personnel Relations no later than the end of the second work day following the decision in *Step 2* that the grievance is not settled. The Director of Personnel Relations may, at his option, request a meeting of the parties to the grievance, but in no case shall his written decision be rendered later than the fifth day following receipt of notification of the grievance.

Step 4. Any grievance which has not been settled in *Step 3* may be submitted by either party to arbitration, providing the matter in dispute involves only the interpretation or application or alleged violations of this Agreement.

Such submission shall be made, not later than five days from the date of the decision given in *Step 3* by written notice to the other party and the American Arbitration Association. The selection of the arbitrator and the conduct of the arbitration proceedings shall be in accordance with the rules of the Association.

Section 7. *Extension of Time.* It is mutually agreed that the stipulated times set forth in the above steps may be extended by mutual agreement for a good and sufficient reason.

Section 8. *Power of Arbitrator.* An award of the arbitrator shall be final and binding on all parties if the award is within his power and authority. The expenses and fees of the arbitrator shall be shared equally by the Institute and the Union. The arbitrator shall be limited to determining questions involving the interpretation, application, or alleged violation of the terms of this Agreement. He shall have no authority to add to, or subtract from, or to change any of the terms of this Agreement, including existing wages, or to arbitrate the terms of a new agreement. He shall have no power to impose an obligation on the Institute or Union which does not appear in this Agreement, or to deny a right to the Institute which has not been specifically waived in this Agreement. This Article shall not preclude the Institute from enforcing its rights in any court of competent jurisdiction.

Grievance Handling

A grievance can be very real and the facts quite clear; it can also be an imagined violation. In any event, grievances stem from a wide variety of causes and may arise for reasons outside the contract.

The proper handling of grievances imposes the following rules of administrative conduct:

1. Give the grievance immediate attention;
2. Secure all the facts;
3. Settle grievances as close to the area of origin as possible;
4. Be completely objective; base all decisions on fact and merit; eliminate personal feelings, biases, or emotions; and
5. Provide due consideration for the views of the aggrieved and the union and its various levels of representation in order to gain confidence and respect.

Additionally, the administration should attempt to study an individual grievance in depth to determine, if possible, whether the subject being discussed is the real grievance. For example, let us suppose that a grievance is filed stating that a specific job assignment is refused because it is "outside the job description" and that a thorough investigation reveals that the same job was performed previously with no

complaint. Perhaps an in-depth study will reveal that the real "gripe" in the grievance was the manner in which the supervisor assigned the job.

Grievances should also be analyzed periodically to determine if a specific contract clause, operational area, or supervisor (or steward) is causing the complaints. If such a finding is made, then obviously corrective steps should be taken.

If a specific contract section or clause is causing difficulties, a thorough discussion and clarification of its application by both union and institutional representatives will possibly serve to eliminate what may be merely a misunderstanding. If such a clause is poorly worded, a rewording during subsequent negotiations, based on experience, should eliminate the difficulty. If the time for renegotiations is too far off, a Memorandum of Understanding should stop the problem immediately.

Supervisory Role

One of the real problem areas for college administrators in the field of union relations is that of the supervisory force. The supervisor is the administration's "first line of defense," but at the same time the supervisor is the individual between the hammer and the anvil. He needs all the help the administration can provide.

Unionization of an employee group undoubtedly creates restrictions on the previous supervisory method of operation. It is, therefore, to be expected that some supervisors, at all levels, will resent the entrance of a union. Experience in many institutions indicates that in the period following unionization the most important adjustment area is in the ranks of the supervisory force. Some supervisors will adjust quickly; others will take longer; and still others will never adjust to the new way of doing things. Individuals in the latter group should seriously be considered for assignment to areas removed from union contact. Harmonious union relations are difficult to attain under the best of circumstances. An unadjusted supervisor merely serves as an additional and unnecessary obstacle to the attainment of good labor relations.

Supervisory Education

A large part of the answer to supervisory reaction to unionization is education. The curriculum should cover the gamut of personnel

and supervisory practices. Ideally, it should specifically cover such items as proper department induction, personnel practices and policies of the institution, benefit program and procedures, supervisory practices, the union relations policy of the institution, the provisions of the collective bargaining agreement, the grievance procedure, and the role of the union steward.

It is also suggested that, as opportunity permits, supervisory personnel should be included (at least, as observers) in union discussions at the higher levels, including negotiations, so that they may see the importance of (1) logical thinking; (2) securing assistance of the personnel function in making an original determination on decisions relating to the union agreement; and (3) the maintenance of adequate and accurate records, particularly in discipline cases.

Employee Discipline

One of the major and often reoccurring questions in a supervisor's day-to-day activities is the broad subject of maintenance of employee discipline. All too frequently this process involves the ultimate decision concerning a discharge. The union under present-day rules must, if any possibility of a reversal of the discharge decision exists, process a discharge through the entire grievance procedure, including arbitration. The final decision will rest on whether the discharge was for "just cause." Arbitrator Carroll R. Dougherty[1] in handing down his decision on a discharge case outlined the questions which must be answered affirmatively before he would consider "just cause" as existing. The questions which he applies to a case involving discharge are as follows:

1. Did the employer properly forewarn the disciplined employee of the possible disciplinary consequences of the alleged offense with which he was charged and for which he was punished?

2. Was the employer's rule or supervisory order that the employee was alleged to have violated reasonable in terms of the employer's proper business needs and the employee's performance capacity?

3. Before deciding to discipline the employee, did the employer investigate the circumstances involved in the alleged violation or offense?

4. Did the employer investigate the circumstances fairly, fully, and objectively?

[1]Jewel Food Stores, 6-5-70, reported in *Industrial Relations Guide*, Vol. I, Bulletin 17, 8-24-70, Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

5. From its investigation, did the employer obtain truly substantial evidence that the accused employee was guilty as charged?
6. In arriving at its decision of guilt, did the employer act even-handedly and without discrimination against the charged employee?
7. Was the severity of the discipline imposed by the employer reasonably related to the seriousness of the employee's proven offense and to the nature of his past conduct as an employee?

Union Steward Role

The administrator and the supervisory staff must understand the role of the union steward. The steward is the representative of the union at the lowest point in the union hierarchy, often having been elected by an employee group. Thus, he has a dual role to fill. The primacy he assigns to these roles will depend on several factors, including his background and the source of his position (elective or appointive). In any event, he will be both a representative of the union and a representative of the individuals in his group.

In the area of human relations, the steward will be somewhat the counterpart of the supervisor. His background and training undoubtedly will have provided him with a considerably different "people" philosophy than that of the supervisor. However, in general, his role will be that of an understanding representative and spokesman for the members of the group. In this latter role, he will have responsibility for protecting their interests in all areas.

He should not knowingly interfere with the management function, except as the performance of his steward responsibilities may do so indirectly. He should, at all times, operate within the confines of the contract, utilizing discussion, persuasion, and the grievance procedure for the resolution of day-to-day problems. He should not take any unilateral action which would infringe upon, or impede upon, the management process.

Successful supervisors have found that an honest and sincere man-to-man, give-and-take approach is the key to good labor relations at subordinate levels. Differences of opinion are to be expected, but more frequently than not they are resolved by this man-to-man approach when it is based upon mutual confidence and respect.

Scope of Grievance Procedure

The National Labor Relations Board and the courts sanction the use of the grievance procedure in settling labor disputes. They will

decline jurisdiction if the proceedings, including arbitration, are fair and regular and if all parties agree to be bound by a decision which is clearly not contrary to the National Labor Relations Act or other pertinent legislation.

The normal grievance machinery creates the settlement of the vast majority of grievances; only a very small percentage of grievances reach the final step of arbitration. It is estimated that approximately sixty percent are settled at the first step; thirty percent, at the second; and slightly less than ten percent, at the third or higher steps. Less than one percent go the full route to arbitration.

Arbitration

Labor arbitration is very briefly defined as a procedure wherein both the employer and the union voluntarily agree to submit a grievance—an issue of disagreement on interpretation or application of the agreement or other dispute—for determination by an impartial individual (or group) on the basis of evidence and argument presented by both parties. Arbitration is an integral part of the collective bargaining system in this country. The vast majority of labor contracts provide for such proceedings as the terminal step of the grievance procedure.

In general, the most prevalent disputes submitted for solution are created by interpretation of conduct described in the agreement, or by ambiguity in or conflict within the contract, or by those items on which the contract is silent.

The arbitration clause of the agreement should specify the what, how, when, where, and who of arbitration, as well as the procedures for invoking arbitration, payment of costs, and a statement that both parties agree to accept the decision or award as final and binding, where legally permissible.

Selection of Arbitrator

The agency or service which will arrange for the proceedings is generally mentioned in the contract arbitration clause; that is, the American Arbitration Association or state or federal mediation services. Upon receipt and/or completion of the initiating procedures, the agency will proceed in accordance with its procedures to appoint an arbitrator. The procedure for the various agencies performing this function is basically the same. An identical panel of arbitrators,

accompanied by background resumés of each of the individuals named in the panel, is submitted simultaneously to both parties. The precise selection method varies somewhat between regional areas or institutions, but all methods provide for the removal of individuals from the panel. The reasons for striking an individual from the panel are many, but include, among others, an apparent unfamiliarity with the grievance subject, a background too closely allied to the other party, or a history of decisions favoring the opposition.

There are two popular methods of arbitrator selection. In the first, each party, independent of the other, strikes those individuals who are unsatisfactory from his point of view. The remaining names are numbered in ascending order of preference. Each party returns his list to the agency, where the two lists and numbered preferences are compared. The preference numbers of those who appear on both lists are added, and the individual with the lowest total number is generally selected as the arbitrator.

In the second method, the parties meet, determine who will strike the first name, usually by a flip of a coin, and proceed to alternately strike names from the list. Selection is then made from the names remaining or the last remaining name.

If it is found that no mutually agreeable individual can be selected from the original list in either of these methods, a second panel of arbitrators is requested, and the process is repeated. If the second panel fails to provide a mutually satisfactory arbitrator, the agency will generally make the selection from the balance of its panel without submission of additional lists.

Occasionally, the parties to a collective bargaining agreement with an ad hoc arbitration clause may find they are faced with two or more grievances which have advanced to the arbitration step. The major question to be resolved is whether to utilize a single individual for all the cases or a different arbitrator for each case. There is no simple answer. The issues of each case and one's faith in, and experience with, the arbitration process are factors which have bearing on the resolution of this question. There are too many examples of the successful use of both approaches to be able to make a recommendation in this area.

An indication that a single arbitrator can objectively handle a large number of separate and distinct cases is reflected in the utilization of a permanent arbitrator by many employers and unions. Under such an arrangement, the arbitrator hears all the disputes arising between the parties. This arrangement eliminates the sometimes time-consuming selection process described above.

Hearing Procedure

At the hearing, arguments, evidence, and witnesses are presented by both parties in an attempt to convince the arbitrator of the justice and validity of their respective positions. In disciplinary and discharge cases, the employer will present the opening statement, followed by a similar presentation by the union. Evidence and witnesses are then presented by the employer followed by cross examination by the union representative. The opposition makes its presentation, which also is subject to cross examination by the employer representative. The arbitrator(s) at any time may ask questions for clarification or additional pertinent information.

Before the hearing is closed, both sides will be given an opportunity to make a closing statement and summary. This is the time to summarize the factual situation, to reiterate the issue and decision the arbitrator is asked to make, and to refute the arguments of the opposition, unless a post-hearing brief is to be submitted. It is not unusual, however, for the summations to be waived by both parties.

The arbitrator will then conclude the hearing and render his decision, usually within a thirty(30)-day period.

In almost all hearings, witnesses will be asked to take an oath. A stenographic transcript is generally used only on very important cases. If both parties desire a transcript, the cost is shared; otherwise, the party desiring such a record pays the entire cost. Pre-trial or post-hearing briefs also are infrequently used. The use of subpoenas in the arbitration procedure varies from region to region or from state to state and is dependent upon the laws which regulate such activity.

Arbitration proceedings also may be conducted before a tripartite (three-person) panel. The main advantage of this procedure is that it provides each party with an advocate of its position in the final deliberations. The disadvantages are increased cost and, in some instances, that the additional personnel may create delays in arriving at a decision.

Costs of Arbitration

The cost of an arbitrator is in excess of $150 per day, covering time spent in the hearing and preparation of the decision, in addition to travel expense. These costs are shared equally by both parties, and payment is generally made to the arbitrator directly.

The American Arbitration Association assesses a modest administrative fee, since its administrative participation carries beyond the selec-

tion of the arbitrator. The Federal Mediation and Conciliation Service does not charge such a fee, since its participation, as far as the participants are concerned, ends with the assignment of the arbitrator. Cancellation and postponement charges, where applicable, are borne by the responsible party.

Use of Counsel

It is generally agreed that since arbitration is not a formal judicial procedure, legal counsel need not be engaged unless the dispute subject is complicated or legalistic in nature. It should also be obvious that arbitration is not a proceeding to be taken lightly or by the inexperienced. In the absence of staff arbitration experience, legal counsel should be utilized. Current experience indicates that legal counsel is used in approximately half of the hearings.

The average arbitration proceeding, however, can be conducted by an experienced personnel or labor relations specialist. Advantages to this approach include (1) reduced costs; (2) less likelihood of a formal legalistic presentation; and (3) a greater understanding of the question under discussion by the institutional staff representative.

Arbitration Philosophy

Most certainly, the institution should enter arbitration proceedings with the belief that its case is just and valid and that its position will prevail in the arbitrator's decision. It would be the height of folly to allow a case to go to arbitration in which it was certain that the decision would favor the opposition.

In most ad hoc arbitration proceedings (for this case only), the position of an institution will be ruled upon by an individual who is sworn to be fair, honest, and objective. However, the arbitrator, being human, brings to the hearing a lifetime of experience and education, and, despite a sincere desire to be completely objective, his background and experience will, in many ways, determine his decision.

Therefore, although there should be a desire to win in all cases, there will be occasional losses. These losses should not seriously undermine the individual's faith in arbitration or of the individuals presenting the institution's case. In fact, much can be learned by occasional losses. This is particularly true when applied to supervisors and their conduct. Repeated or consistent rejection of the institution's position should be cause for close examination of the labor relations philosophy

or of the individuals handling the labor relations program. While the cliché says, "You can't win them all," you should not lose them all either.

Winning at Arbitration

The best and only rule for success at arbitration, assuming a valid position, is adequate and sound preparation. All possible avenues of investigation should be pursued. The collective bargaining agreement, the clauses which may have a bearing on the dispute, and the history of negotiations which led to the section in question should be studied most carefully. Personnel records, previous grievances, correspondence, and wage data are sources of information and documentation of a particular position. If documents and similar materials are to be utilized in the hearing, copies should be presented to both the arbitrator and the union with key words, phrases, and sentences marked. Evidence of this nature can be most persuasive. A logical step-by-step presentation, leading to the desired decision, is an absolute necessity in the hearing.

Success in arbitration can only come with adequate, complete, and objective preparation, the conclusions of which are presented in a logical and a sincere fashion.

CHAPTER 13

SOURCE MATERIALS AND DIRECTORIES

A. Lee Belcher

Labor Reporting Services

Those responsible for employee relations at an institution need to have many sources of information in order to keep abreast of developments. One of the most complete and dependable sources of this kind of knowledge is found in the labor relations reporting services covering union organizing efforts, unfair labor practice cases, strikes, arbitration decisions, court decisions, and legislative acts which have been passed either at the state or federal level. A bibliography of these services begins on page 97.

Journals

In addition to the commercial labor relations reporting services, there is important information to be obtained from various industrial relations journals, both those published in the United States and those published in various foreign countries. Some of these are identified in more detail on page 98.

Government Publications

Of special value are various publications from the Bureau of Labor Statistics, U. S. Department of Labor, including its *Monthly Labor Review*. One should be familiar with the publications of the Bureau of Labor Statistics and obtain those which seem to be pertinent. Suggested materials are listed on page 99.

Union Publications

Often, it has been found desirable to subscribe to various union publications. These newspapers or magazines (1) provide "a good feel" of the economic, social, and legislative goals which are concerning union leaders; (2) often report on organizing efforts, strikes, and strike settlements; and (3) give information regarding the key union officers with whom one may have contact. For examples of the union publications, see page 100.

Personal Contacts

Not only is it necessary to keep abreast of the developments through published materials, but it is also valuable to maintain personal contacts with others in similar positions in colleges and universities, in industry, in federal and state government, and in academe. Through membership in professional associations[1] and by reading their publications and attending their conferences and workshops, one has valuable opportunities to obtain and to share information and experiences.

Administrative Agencies

As one progresses into the various phases of collective bargaining, it is generally desirable to become acquainted with the offices of the state and federal mediation and conciliation services. Included in this section, beginning on page 101, is a directory of the regional offices of the Federal Mediation and Conciliation Service. If an institution is covered by the National Labor Relations Act, one may have reason to contact the regional offices of the National Labor Relations Board (NLRB). On pages 103-106 is a directory of the regional offices of the NLRB. Because of space limitations, there has been no attempt to include all of the offices of the state mediation services or state labor relations commissions where such have been established by the legislature. Many states have a mediation service with whom the college may need to work, in which case, one can obtain the address and other information regarding such offices through the state government. In the several states, where there are laws governing labor management relations for public colleges and universities, the administrative offices

[1]The College and University Personnel Association; The National Association of College and University Business Officers.

implementing such state laws will be similar to the offices of NLRB. Again, directory information may be obtained locally.

Space does not permit any of the following lists of publications to be complete or all-inclusive. They are only representative of publications available, but they are generally considered to be among the leading ones in their fields.

LABOR RELATIONS REPORTING SERVICES

The Labor Relations Reporter (and Reference Manuals)
Labor Arbitration Reports
Government Employee Relations Report

Published by:
The Bureau of National Affairs, Inc.
1231 25th Street
Washington, D. C. 20037

Labor Arbitration Awards
Labor Cases
NLRB Decisions

Published by:
Commerce Clearing House, Inc.
4025 West Peterson Avenue
Chicago, Illinois 60646

Labor Relations
Industrial Relations

Published by:
Prentice-Hall, Inc.
Englewood Cliffs, New Jersey 07632

INDUSTRIAL RELATIONS JOURNALS

Industrial and Labor Relations Review

Published by:
New York State School of
Industrial and Labor Relations
Cornell University
Ithaca, New York 14850

Industrial Relations

Published by:
Institute of Industrial Relations
University of California
Berkeley, California 94720

British Journal of Industrial Relations

Published by:
London School of Economics and
Political Science
Houghton Street
Aldwych, London, W. C. 2
England

Proceedings of Industrial Relations Research Association (and other special research volumes)

Published by:
Industrial Relations Research
Association
Social Science Building
University of Wisconsin
Madison, Wisconsin 53706

BUREAU OF LABOR STATISTICS

Inasmuch as the Bureau of Labor Statistics (BLS) is regularly publishing new materials, it would be impractical to name all of the current publications. A subscription to the *Monthly Labor Review* is recommended, however, because of its comprehensive articles, its announcements of BLS publications, the section, "Book Reviews and Notes," and the section, "Developments in Industrial Relations." These can be enlightening.

It is from BLS that one can keep abreast of the trend in the Consumers Price Index (commonly referred to as the cost-of-living index), the latest wage and salary surveys for selected classifications, studies on trends in key fringe benefits, current labor statistics, and similar data.

More specific information on these materials may be obtained from either the national or regional offices.

National Office

Bureau of Labor Statistics
U. S. Department of Labor
400 1st Street, N. W.
Washington, D. C. 20427
Phone (202) 393-2420

Regional Offices

Region I
1603-A Federal Building
Government Center
Boston, Massachusetts 02203
Phone (617) 223-6727

Region II
341 Ninth Avenue
New York, New York 10001
Phone (212) 971-5405

Region III
406 Penn Square Building
1317 Filbert Street
Philadelphia, Pennsylvania 19107
Phone (215) 597-7796

Region IV
1371 Peachtree Street, N. E.
Atlanta, Georgia 30309
Phone (404) 526-5416

Region V
219 South Dearborn Street
Chicago, Illinois 60604
Phone (312) 353-7226

Region VI
1100 Commerce Street
Dallas, Texas 75202
Phone (214) 749-3516

Regions VII and *VIII*
911 Walnut Street
Kansas City, Missouri 64106
Phone (816) 374-2378

Regions IX and *X*
450 Golden Gate Avenue
Box 36017
San Francisco, California 94102
Phone (415) 556-3178

UNION PUBLICATIONS

AFL-CIO
815 16th Street, N. W.
Washington, D. C. 20006

The American Federationist
AFL-CIO News

Service Employees' International Union (AFL-CIO)
900 17th Street, N. W.
Washington, D. C. 20006

Service Employees
Public Service News
Leadership News

United Brotherhood of Carpenters and Joiners of America (AFL-CIO)
101 Constitution Avenue, N. W.
Washington, D. C. 20001

The Carpenter

International Brotherhood of Electrical Workers (AFL-CIO)
1200 15th Street, N. W.
Washington, D. C. 20005

The Electrical Workers' Journal

International Union of Operating Engineers (AFL-CIO)
1125 17th Street, N. W.
Washington, D. C. 20006

Operating Engineer

American Federation of Government Employees (AFL-CIO)
400 1st Street, N. W.
Washington, D. C. 20001

The Government Standard

Laborers' International Union of North America (AFL-CIO)
905 16th Street, N. W.
Washington, D. C. 20006

The Laborer

Office and Professional Employees International Union (AFL-CIO)
265 West 14th Street
New York, New York 10011

The White Collar

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (AFL-CIO)
901 Massachusetts Avenue, N. W.
Washington, D. C. 20001

United Association Journal

American Federation of State, County and Municipal Employees (AFL-CIO)
1155 15th Street, N. W.
Washington, D. C. 20005

The Public Employee

American Federation of Teachers (AFL-CIO)
1012 14th Street, N. W.
Washington, D. C. 20005

The American Teacher
Changing Education

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.)
25 Louisiana Avenue, N. W.
Washington, D. C. 20001

The International Teamster

FEDERAL MEDIATION AND CONCILIATION SERVICE

National Office

U. S. Department of Labor Building
Constitution Avenue & 14th Street, N. W.
Washington, D. C. 20427
Phone (202) EXecutive 3-7350

Regional Offices

Region No.	*State*
3	Alabama
7	Alaska
7	Arizona
6, 3	Arkansas
7	California
7	Colorado
1	Connecticut
2	Delaware
2	District of Columbia
3	Florida
3	Georgia
7	Hawaii
7	Idaho
5, 6	Illinois
4, 5	Indiana
6	Iowa
6	Kansas
3, 4	Kentucky
3	Louisiana
1	Maine
2	Maryland
1	Massachusetts
4, 5	Michigan
5	Minnesota
3	Mississippi
6	Missouri
7	Montana
6	Nebraska
7	Nevada
1	New Hampshire
1, 2	New Jersey
7	New Mexico
1	New York
3	North Carolina
5	North Dakota
2, 4	Ohio
6	Oklahoma
7	Oregon
2	Pennsylvania
1	Rhode Island
3	South Carolina
5	South Dakota
3	Tennessee
6, 7	Texas
7	Utah
1	Vermont
2, 3	Virginia
7	Washington
2	West Virginia
5	Wisconsin
7	Wyoming

Territories and Possessions

7	Guam
3	Puerto Rico
3	Virgin Islands

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FEDERAL MEDIATION AND CONCILIATION SERVICE—(*continued*)

Region 1

Room 2937 Federal Building
26 Federal Plaza
New York City, New York 10007
Phone (212) 264-1000

Region 2

401 Mall Building
4th and Chestnuts Streets
Philadelphia, Pennsylvania 19106
Phone (215) 597-7676

Region 3

Room 154 Peachtree-at-7th Building
50 Seventh Street, N. E.
Atlanta, Georgia 30323
Phone (404) 526-5430

Region 4

3059 Federal Building
1240 East Ninth Street
Cleveland, Ohio 44199
Phone (216) 522-3131

Region 5

Room 1402
U. S. Courthouse and Federal Office Building
219 South Dearborn Street
Chicago, Illinois 60604
Phone (312) 353-7350

Region 6

3266 Federal Building
1520 Market Street
St. Louis, Missouri 63103
Phone (314) MAin 2-4591

Region 7

450 Golden Gate Avenue
Box 36007
San Francisco, California 94102
Phone (415) 556-4670

(Each of the above regional offices has many field offices out of which the staff operates.)

NATIONAL LABOR RELATIONS BOARD

National Office

1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570
Phone (202) DUdley 2-4095

Regional Offices

Region No.	*State*
10, 15	Alabama
19	Alaska
28	Arizona
26	Arkansas
20, 21, 31	California
27	Colorado
1, 2	Connecticut
4, 5	Delaware
5	District of Columbia
12, 15	Florida
10	Georgia
37, 20	Hawaii
19	Idaho
13, 14, 38	Illinois
9, 13, 25	Indiana
18, 38	Iowa
17	Kansas
9, 25	Kentucky
15	Louisiana
1	Maine
5	Maryland
1	Massachusetts
7, 30	Michigan
18	Minnesota
15, 26	Mississippi
14, 17	Missouri
19	Montana
17	Nebraska
20, 31	Nevada
1	New Hampshire
4, 22	New Jersey
28	New Mexico
2, 3, 29	New York
11	North Carolina
18	North Dakota
8, 9	Ohio
16	Oklahoma
19, 36	Oregon
4, 6	Pennsylvania
24	Puerto Rico
1	Rhode Island
11	South Carolina
18	South Dakota
5, 10, 26	Tennessee
16, 23, 28	Texas
27	Utah
1	Vermont
24	Virgin Islands
5	Virginia
19, 36	Washington
5, 6, 9	West Virginia
18, 30	Wisconsin
27	Wyoming

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NATIONAL LABOR RELATIONS BOARD—(*continued*)

Region 1

7th Floor, Bulfinch Building
15 New Chardon Street
Boston, Massachusetts 02203
Phone (617) 223-3330

Region 2

36th Floor, Federal Building
26 Federal Plaza
New York, New York 10007
Phone (212) 264-0300

Region 3

4th Floor, The 120 Building
120 Delaware Avenue
Buffalo, New York 14202
Phone (716) 842-3100

Region 4

1700 Bankers Securities Building
Walnut & Juniper Streets
Philadelphia, Pennsylvania 19107
Phone (215) 597-7601

Region 5

Federal Building, Room 1019
Charles Center
Baltimore, Maryland 21201
Phone (301) 962-2822

Region 6

1536 Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Phone (412) 644-2977

Region 7

500 Book Building
1249 Washington Boulevard
Detroit, Michigan 48226
Phone (313) 226-3200

Region 8

1695 Federal Office Building
1240 East 9th Street
Cleveland, Ohio 44199
Phone (216) 522-3715

Region 9

Room 2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202
Phone (513) 684-3686

Region 10

Room 701, Peachtree Building
730 Peachtree Street, N. E.
Atlanta, Georgia 30308
Phone (404) 526-5760

Region 11

1624 Wachovia Building
301 North Main Street
Winston-Salem, North Carolina 27101
Phone (919) 723-2300

Region 12

Room 706 Federal Office Building
500 Zack Street
Tampa, Florida 33602
Phone (813) 228-7227

Region 13

881 Everett McKinley Dirksen Building
219 South Dearborn Street
Chicago, Illinois 60604
Phone (312) 828-7572

Region 14

1040 Boatmen's Bank Building
314 North Broadway Street
St. Louis, Missouri 63102
Phone (314) 622-4167

Region 15

T 6024 Federal Building
701 Loyola Avenue
New Orleans, Louisana 70113
Phone (504) 527-6361

Region 16

8A24 Federal Office Building
819 Taylor Street
Fort Worth, Texas 76102
Phone (817) 334-2921

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NATIONAL LABOR RELATIONS BOARD—(*continued*)

Region 17

610 Federal Building
601 East 12th Street
Kansas City, Missouri 64106
Phone (816) 374-5181

Region 18

316 Federal Building
110 South 4th Street
Minneapolis, Minnesota 55401
Phone (612) 725-2611

Region 19

Republic Building, 10th Floor
1511 Third Avenue
Seattle, Washington 98101
Phone (206) 583-4532

Region 20

13050 Federal Building
Box 36047
450 Golden Gate Avenue
San Francisco, California 94102
Phone (415) 556-3197

Region 21

Eastern Columbia Building
849 South Broadway
Los Angeles, California 90014
Phone (213) 688-5200

Region 22

Federal Building, 16th Floor
970 Broad Street
Newark, New Jersey 07102
Phone (201) 645-2100

Region 23

Dallas-Brazos Building, 4th Floor
1125 Brazos Street
Houston, Texas 77002
Phone (713) 226-4296

Region 24

Pan Am Building, 7th Floor
P. O. Box U U
255 Ponce de Leon Avenue
Hato Rey, Puerto Rico 00919
Phone (809) 765-0404

Region 25

614 ISTA Center
150 West Market Street
Indianapolis, Indiana 46204
Phone (317) 633-8921

Region 26

746 Federal Office Building
167 North Main Street
Memphis, Tennessee 38103
Phone (901) 534-3161

Region 27

Room 260, New Custom House
721 19th Street
Denver, Colorado 80202
Phone (303) 837-3551

Region 28

7011 Federal Building and U. S. Courthouse
500 Gold Avenue, S. W.
P. O. Box 2146
Albuquerque, New Mexico 87101
Phone (505) 843-2507

Region 29

4th Floor, 16 Court Street
Brooklyn, New York 11201
Phone (212) 596-3535

Region 30

Commerce Building, 2nd Floor
744 North 4th Street
Milwaukee, Wisconsin 53203
Phone (414) 224-8600

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NATIONAL LABOR RELATIONS BOARD—(*continued*)

Region 31

Room 12100 Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024
Phone (213) 824-7351

Sub-Region 36

310 Six Ten Broadway Building
610 S. W. Broadway
Portland, Oregon 97205
Phone (503) 226-3361

Sub-Region 37

Suite 308
1311 Kapiolani Boulevard
Honolulu, Hawaii 96814
Phone (808) 546-5797

Sub-Region 38

10th Floor Savings Center Tower
411 Hamilton Boulevard
Peoria, Illinois 61602
Phone (309) 673-9061